INSPECTORS GENERAL LEGISLATION

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CONTENTS

Page

Opening statements:
- Senator Roth 1
- Senator Pryor 3
- Senator Eagleton 3

WITNESSES

THURSDAY, JUNE 18, 1981

Edwin L. Harper, Deputy Director, Office of Management and Budget 5

William Howard Taft IV, General Counsel, Department of Defense, accompanied by Joseph H. Sherick, Assistant to the Secretary of Defense for Review and Oversight 17

Stanley E. Morris, Associate Deputy Attorney General, Department of Justice 52

ALPHABETICAL LIST OF WITNESSES

Harper, Edwin L.:
- Testimony 5
- Prepared statement 15
- Responses to written questions submitted by Senator Roth 16

Morris, Stanley E.: Testimony 52

Sherick, Joseph H.:
- Testimony 17
- Summary of staffing 29
- Prepared statement 43

Taft, William Howard, IV:
- Testimony 17
- Prepared statement 39
- Responses to written questions submitted by Senator Roth 45

INSPECTORS GENERAL LEGISLATION

THURSDAY, JUNE 18, 1981

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, D.C.

The committee met at 10 a.m., in room 3302, Dirksen Senate Office Building, Hon. William V. Roth, Jr. (chairman of the committee) presiding.

Present: Senators Roth, Eagleton, and Pryor.

OPENING STATEMENT OF SENATOR ROTH

Chairman ROTH. The committee will please be in order.

Today the committee begins hearings on the subject of whether to extend the Inspectors General Act of 1978 to the Departments of Defense and Justice. Our witnesses will include Mr. Edwin Harper, Deputy Director of OMB, Mr. William Taft IV, General Counsel for the Department of Defense, Mr. Joseph H. Sherick, Assistant to the Secretary for Review and Oversight, and Mr. Stanley E. Morris, Associate Deputy Attorney General, Department of Justice.

Our committee has had numerous hearings and investigations on the issue of waste and fraud in Federal programs. Many of these hearings and investigations have highlighted examples of incredible sums squandered by profligate spending, mismanagement, needless purchases, unnecessary operations and inept supervision and neglect. As a committee and within the administration, efforts are being made to attack the problems of hurry-up, year-end spending, borrowers defaulting on federally insured loans, lack of strong internal control systems, fostering accountability by increasing audit and investigative capabilities and other activities designed to promote greater efficiency, economy, and effectiveness in Government. It is appalling that the taxpayers' money is being wasted, and this committee will continue to root out and find abuse and waste where it exists and recommend legislation to correct it.

I hope that as we approach a new era and cognizance on the part of the administration concerning the problems of Government efficiency and integrity, that Congress and the administration can work together to alleviate these problems.

On March 26, 1981, President Reagan appointed a Council on Integrity and Efficiency. The President said, "The reduction of fraud and waste in all Federal programs is a major commitment and priority of my administration." Membership on this Council will include all of the statutorily created Inspectors General, along with other key Government officials including representatives from the Departments of Defense, Justice, Treasury, and the Agency for International Development. We look forward to the findings of the

Council and hope that such a Council can effectuate much-needed reforms.

The first statutory Inspector General was created at HEW in 1976. Statutory Offices of Inspector General currently exist in 10 Cabinet and 5 other independent agencies. The Statutory Inspectors General for the Departments of Energy and Education were included in the legislation creating these Departments; all others were created in the Omnibus Inspector General Act of 1978 passed by this committee.

Under the 1978 act, Inspectors General are expected to conduct and supervise audits and investigations relating to programs and activities of their particular agency or departments. They are charged with promoting the economy and efficiency of agency programs and preventing and detecting fraud and abuse within that agency or department

This hearing is an information gathering hearing. We will hear testimony by Defense and Justice as to their agency efforts in fighting waste, fraud, and abuse and how Inspector General Legislation will assist them in that fight.

The Department of Defense will be expected in the next few years to absorb significant increases in funding. The proposed Defense budget through 1984 will amount to trillions of dollars in an effort to increase the capability of our Armed Forces. With this increased spending comes a responsibility to carefully monitor expenditures to minimize wasteful or ineffective spending. Waste is waste whether it occurs in DOD or in the General Services Administration. Every dollar lost through mismanagement or fraud lessens our ability to strengthen our defenses.

The American public is concerned about waste in defense programs and is aware of the potential which exists in these programs for waste and mismanagement. For example, the Chicago Tribune, in an informative, in-depth series, documented serious problems in defense procurement.

As a specific example, $40 million per year is wasted in the area of cargo and supply transport. The Air Force loses this money burning 73 million gallons of jet fuel annually by flying empty C-5 and C-141 cargo planes from California bases to the east coast for supply pickups and flights to military posts in Europe.

These examples show that the Defense Department is not immune to the potential for fraudulent or ineffective spending, although few would argue that money is not needed to improve our military readiness. However, our defense posture could be improved more dramatically, and taxpayer funds saved, through the elimination of mismanagement and by reorganization of procedures in the defense establishment. The committee is aware that Secretary Weinberger and the administration are making efforts to eliminate these problems. We as a committee have that same responsibility to insure that Congress does everthing possible to eliminate ineffective or wasteful expenditures.

The issue we have before us today is how we can best devise mechanisms to minimize program inefficiencies and curb waste. The issue is broader than merely defense programs. Also of concern to the committee are the management of Justice and Treasury Department programs. For example, the Republican Study

Committee found in a recent study that significant savings, estimated in the millions, could be realized in Justice through improved management at the Bureau of Prisons.

The bottom line we are seeking to establish in this hearing today is this: Can the concept of the Inspector General help reduce waste and improve management in the Defense, Justice, and Treasury Departments? If we decide the concept is worthwhile, how should the Inspectors General in these Departments be structured?

I look forward to hearing the testimony today. Senator Pryor?

OPENING STATEMENT OF SENATOR PRYOR

Senator **Pryor**. Mr. Chairman, I would like to commend you for scheduling this hearing today.

I don't think there could be a more timely subject, and I would just like to say that the men and women who have served thus far as Inspectors General, I think, have more than demonstrated the value of promoting efficiency and economy in the various agencies and departments for which they have worked. Serving as ever-present watchdogs for fraud, waste, and abuse, they are truly one of the most cost-effective actions I think the Congress has ever taken.

The concept of extending the Inspector General Act of 1978 to additional agencies and departments must, I think, be viewed favorably. But recognizing that the departments and agencies presently under consideration were specifically excluded from the original legislation, I think that our committee must first give consideration to why and how these agencies and departments are different and whether legislation creating new Inspectors General should include provisions for setting these agencies apart in certain ways.

To be honest, I have some reservations about setting apart the Department of Defense from the other agencies. As we look at the expenditure of taxpayer's money, certainly we should be mindful of the fact that these departments comprise a substantial portion of the Federal budget and the need for independent officials to minimize waste and unnecessary spending is present.

After all, this is the responsibility we owe every taxpayer in this country. It is equally important, though, that we take care not to unduly interfere with the unique responsibility delegated to these agencies and departments and I think today's hearing seeks to explore those considerations. I look forward to listening to the witnesses and possibly asking a few questions at the proper time, Mr. Chairman.

Chairman **Roth**. Thank you very much.

Thank you, Senator Pryor. I am particularly pleased to have Senator Eagleton, the ranking member, here. He is the one who has been very instrumental in creating the Inspectors General already on the books. Senator Eagleton, would you care to make any opening statement?

OPENING STATEMENT OF SENATOR EAGLETON

Senator **Eagleton**. Thank you very much, Mr. Chairman. I commend the chairman for convening this hearing on this subject matter, which I think is of significance. The present level of fraud and program abuse, and just the plain waste in Federal programs and operations I think to all of us on this committee and the country as a whole is unacceptable. We cannot permit the squandering of billions of dollars in this time of double-digit inflation and scarce budgetary resources. It fuels the fires of inflation. It robs Federal resources which might otherwise be available to meet legitimate, even pressing, needs. It promotes understandable public cynicism about all Federal programs, eroding support for these activities.

While there is no miracle or overnight cure to these problems, the 1978 Inspector General legislation represents perhaps the most significant step to be taken to combat fraud, abuse, and waste in Federal programs. While the Inspectors General program is still relatively new, it has already racked up some impressive successes in terms of dollars of savings identified and indictments produced, and the like.

When the Congress considered the 1978 act, every agency affected, I might point out, opposed the legislation. Some argued they were doing a good job battling fraud and waste; others, striving for credibility, allowed they had done poorly in the past, but the future was bright because they just reorganized their audit investigative efforts.

In passing the Inspector General's legislation, Congress rejected the business-as-usual approach. We identified specific organizational problems which were crippling the audit and investigative efforts in the agencies and sought to cure them; centralizing the leadership of audit and investigative functions in a high-level official, responsible only to the agency head with the independence to get the job done.

To my mind, nothing that the committee does this year will be any more important or as timely as the consideration of the statutory Inspector General for the Department of Defense.

A consensus has developed in this Congress and the country that our defenses must be strengthened. At the same time, there is a growing awareness of the toll which fraud, waste, and mismanagement takes at the Pentagon. And I note for the record the current four- or five-part series by the CBS on defense and particularly just by unique coincidence last night's 1-hour piece on cost overruns and escalating costs to certain specific weapons systems. This hearing could not have been more timely placed. I am right in the midst of a very interesting five-part CBS series.

As Senators Metzenbaum and Goldwater noted in a joint letter to Secretary Weinberger, our defense procurement policies in the management of defense contracts has been disastrous.

Here is a quote from them:

> Run-away costs characterize our entire defense program. These vast expenses have nothing to do with maintaining the strength of our military forces. They are pure and simple the result of a system that permits DOD officials to operate as though the public purchases had no limits. It is a system that can and must be changed.

Just recently retired Comptroller General Elmer Staats' valedictory remarks contained a list of the 15 areas which could result in savings of $4 billion per year by 1985 at an absolute minimum.

During the Carter administration, Mr. Claytor, Secretary of the Navy, and later Deputy Secretary of Defense, once told Congress, "There is nothing wrong with the Navy that money won't fix."

Well, given that mind set, it is perhaps no coincidence that Mr. Claytor testified for the Carter administration opposing any statutory Inspector General for the Department of Defense.

Plainly, no management improvements were necessary, at least in his eyes, and nothing more needed to be done to combat fraud, waste, and mismanagement.

The Reagan administration deserves praise for its willingness to endorse a statutory Inspector General at the Department of Defense, although the specifics of the administration's proposal are certainly open to some question. It does represent important progress and increasing awareness that very few people in Congress or the executive would subscribe to Mr. Claytor's sentiments I previously mentioned. Fraud, waste, and mismanagement at the Pentagon is not a partisan issue. It is not a legislative versus executive issue. Certainly not the exclusive concern of a handfull of congressional doves. It is a fact of life Congress must deal with. The quality of our defenses and any hope of controlling inflation depends on improving management at the Pentagon.

I might say in conclusion, Mr. Chairman, I want to congratulate Dr. Harper. He could have fallen prey to that same mind set of Mr. Claytor's and taken the position everything was just hunky-dory and superperfect and nothing more needed to be done, but he, on behalf of the administration, has been extremely forthcoming on the question of the DOD Inspector General and I compliment him for the position he has taken.

Chairman ROTH. Thank you for your illuminating statement, Senator Eagleton.

At this time we are happy to welcome again Mr. Harper. I would ask him to proceed as he sees fit.

TESTIMONY OF EDWIN L. HARPER, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. HARPER. Thank you very much, Mr. Chairman, Senator Eagleton.

I have with me Mr. Hal Steinberg, Associate Director for Management.

If I may, I will summarize my written testimony and submit the text for the record.

We do indeed appreciate the opportunity to come and discuss with you proposals to extend the Inspector General concept to the Defense Department and the Justice Department.

As noted in my House testimony on H.R. 2098, the President does support legislatively mandated Inspectors General in all the major departments. The key to the strength of legislatively mandated Inspectors General is their enhanced ability to operate objectively and independently enabling a positive contribution to Government-wide antifraud and waste efforts mandated by President Reagan. We continue to support legislatively mandated Inspectors General not only in the Defense and Justice Departments, but also in Treasury and AID.

I understand that the committee is interested in how the administration perceives the Inspector General role in these agencies and views we may have on the recently passed H.R. 2098. I am indeed pleased to address these specific points.

First of all, with respect to the role of the Inspector General, for the Inspector General concept to be most effective in Defense and Justice, we feel it must be tailored to the unique and sensitive characteristics of the missions of both of these agencies. We have been working closely with the committee staff to develop some legislative provisions that adequately reflect these unique mission requirements.

Today we would like to offer some specific suggestions.

But, first of all, our comments on H.R. 2098.

We think that this bill passed by the House does emphasize the strength of the legislative mandated Inspectors General in the 1978 act. I think it is important to have these in focus because they are, in fact, the essence of the power of the Inspector General and his independence. First of all, they are Presidential appointments confirmed by the Senate.

Second, they have a formal reporting relationship to the agency heads.

A third point, they report to the head of the agency, not program officials. So they don't get mixed up in the program activities. And that is my fourth point, they are independent of operating responsibilities, so they don't have a vested interest in whether or not a particular system or program is successful.

Their only interest is in the total success of their agency in the interests of the administration, the Congress, and the taxpayer. In other words to make sure the most effective use is made of our resources.

And finally, a fifth point that relates to the Inspectors General's power and independence is the formal set of communications that are required by Executive order between the Justice Department, the FBI, and the Executive Office of the President, specifically the Office of Management and Budget. The President's Council on Integrity and Efficiency which he established by Executive order earlier this year I think emphasizes networks of communications which adds to the importance of these posts.

I think that our experience has been that a formal declaration of independence by itself is not enough for an Inspector General to really to effective. What he has to do is to establish constructive working relationships within his agency, most importantly, of course, with the agency head as well as with the financial and program managers in the Department.

Overall, I think it is key that the agency head view the Inspector General as a vital element of his management team. If they are not viewed as a resource to help improve management, I think the Inspector General's value to the agency and the cause of honest and efficient government, in fact, is limited. I think this relates to the principal reason for believing the Inspector General concept needs to be tailored to the unique characteristics of the agencies being discussed today.

I think this will help them work constructively within their agency's management framework, but I do not think that this tailoring needs to in any way, nor should it, impair the Inspectors General's objectivity and effectiveness.

While H.R. 2098 begins to recognize this need, we will offer additional suggestions which we feel will result in strong and independent Inspectors General, and Inspectors General who can be effective parts of their agencies' management structure.

One aspect of H.R. 2098 which we would endorse is to compensate all of the Inspectors General at a level 4 since we feel these positions in all of the agencies are really of equally complex nature, regardless of the specific dollar size of the individual agencies.

Now with respect to some of the specific recommendations of the administration, the individual agencies that will be appearing before the committee I think can provide specific details, including composition of their Inspector General offices. But let me highlight some of the basic suggestions which are designed to provide meaningful safeguards to insure the objectivity of the Inspector General operations, and to accommodate the unique and complex agency missions, functions, and characteristics of the Defense and Justice Departments in particular.

With respect to the Defense Department, I think the key here is the relationship between the Secretary and the Inspector General. Indeed, I think most of us would have to admit there is a fundamental difference in the nature of the responsibilities of the Defense Department and some of our domestic agencies.

The Defense Department is involved in national security and must be accorded the characteristics of confidentiality and sometime secrecy that are required for that mission objective.

I think at times the Secretary of Defense may reach the conclusion that in the interest of national security, a specific activity might not be appropriately audited at that point in time. He could and should use his judgment in those cases, but I would anticipate those would be very rare and unusual circumstances and that if such a circumstance ever did occur, that it would be appropriate to statutorily mandate that the Secretary of Defense would report to the appropriate committee chairmen that such an action had taken place.

With respect to the Justice Department, here our key concern is to avoid hindering the Department's ability to carry out its litigative and law-enforcement responsibilities. We need to assure that the Attorney General remains strictly accountable for the discretionary determinations with respect to litigation and with respect to law enforcement. I think it is clear, however, that we want the Inspector General to review all functions which can be evaluated by cost-effectiveness standards. There is also the issue of subpenas in the Justice Department, which I think has a special significance in that Department.

In closing, when the President created the Council on Integrity and Efficiency, he anticipated legislatively mandated Inspectors General in Defense, Justice, Treasury, and AID, and we are working closely with these agencies and, in fact, have included them on the President's Council on Integrity and Efficiency.

We are happy to have the opportunity to work with this committee to establish legislatively mandated Inspectors General in these four agencies.

At this point, Mr. Chairman, I would be happy to respond to any questions which you and other members of the committee may have.

Chairman Roth. Thank you, Mr. Harper.

I would like to join Senator Eagleton in expressing my appreciation for your interest and help in this area of extending the concept of statutorily mandated Inspectors General. In the case of defense, you mention in your testimony that there would be cases where, for reasons of national security, that the Secretary of Defense may request the Inspectors General to not undertake an audit or investigation. In those cases the Department would be required to notify the appropriate congressional committees as to the reasons for the Secretary's veto.

You say this would be rare, but I wonder if you would state what would be the appropriate congressional committees?

Mr. Harper. It could vary from time to time, but I would anticipate those committees with direct responsibilities for the Defense Department, the Armed Services Committee and Senate Intelligence Committees, would be those that would seem the most appropriate.

Chairman Roth. Would you consider it appropriate because of its oversight responsibility to include the Governmental Affairs Committee on both sides?

Mr. Harper. That is a possibility.

Frankly, I had not previously gotten to the point of discussing specific committee jurisdictions with either the Defense Department or with the committee staff.

Chairman Roth. You have had some opportunity to review the activities of the Inspectors General. I wonder if you would care to comment on how you think this concept is functioning?

Mr. Harper. Mr. Chairman, I think the concept is really doing very well. I think the progress, as a matter of fact, that we can find at the bottom line, if you will, with respect to the Inspectors General, is going well. For example, one of the things that we will be putting together and releasing shortly is the first consolidated summary of the semiannual reports of the Inspectors General. Each of them, as you know, by statute prepares an independent report. We thought it would be interesting perhaps to the committee and public at large to know what the results are on a consolidated basis. I can give you some of those highlights now.

For example, in the 12 months of fiscal 1980, the Inspectors General questioned $1.35 billion worth of expenditures.

In the first 6 months of fiscal 1981, they have already questioned $1.1 billion of expenses. So the number of questioned expenses has risen considerably and would be well in excess of what it was in the prior year. I think even some more concrete examples are that in the first 6 months, we attained over 300 indictments and, as a matter of fact, also over 300 convictions arising out of the activities of the Inspectors General. Also, we have had recoveries of more than $95 million and cost avoidances which can be documented of over $300 million.

This work is ongoing and if you like, I could pull out a few examples of things that have happened in just the last couple of weeks, which I think may be of interest to the committee and give them a flavor as to some of the things the Inspectors General are working with, and it ranges from things directly involving Federal employees. Let me give you a couple of examples there.

For example, a former National Weather Service employee has entered a plea of guilty to one count of presenting false claims to the Government. As a matter of fact, the prosecution is based on investigative work which documented 299 instances of presenting false claims and these total over $29,000. Each one of these instances was a very small instance. I suppose the individual thought he could get away with it because it was so small. But, in fact, the Inspector General Office caught this situation and reported on it and was successful in securing a guilty plea. As a matter of fact, one of the priorities of the Inspector General right now is to examine imprest funds, petty cash funds, if you will, to be sure we have proper control and the Government is not losing $10 at a shot 300 times a year which begins to add up. That is one example of something involving a Federal employee.

Another which may be of interest to the committee has to do with the Department of Agriculture. Here we have saved and recovered $10 million. There was a contractor hired to build a containment center for research for $10 million. In fact, he didn't perform. The contractor and the company was convicted of fraud, and the Government will be able to recover its $10 million.

In another case, that I think is important involves a vendor dealing with the Government and a jail sentence. Here a major nursing home operator had been sentenced to 5 years in jail on May 26 for medicaid fraud, and to a 5-year probation thereafter. He was also fined $120,000 and ordered to make restitution.

One of the other things which has received some note before is the matter of overpayments in the Veterans' Administration. And this is the biggest dollar item we have to report out of the last couple of weeks. Here the final report of the Inspector General's Office of the VA education programs has now been completed. They have found that over $400 million in overpayments have been made in this program. The audit found that 58 percent of the dollar value of overpayments is due to delays, inaccurate reporting of schools and students; 22 percent due to delays in timely processing by the VA. The Inspector General's Office has made suggestions for corrective action.

I think these are just a few of the many instances and items that have come up just in the last 3 weeks of the activities of the Inspectors General.

Chairman **Roth**. My 10 minutes are up.

I have a few additional questions. At this time, Senator Pryor?

Senator **Pryor**. Senator Eagleton is the authority on this subject.

Senator **Eagleton**. Dr. Harper, is the main reason for treating the Inspector General of the Department of Defense differently than the Inspectors General in the other agencies that already have the sensitivity of the national defense issue? Is that what causes you to believe the independence, who reports to whom, who controls who, ought to be somewhat different in DOD than other civilian departments?

Mr. **Harper**. I think that is one of the critical reasons why we need to consider the unique characteristics of the Defense Department.

Senator **Eagleton**. If it is only one, what are the other crucial differences that cause you to believe it should be treated in a different way?

Mr. **Harper**. I think that is the most important. I think there is another issue which in fact may get down to some technicalities of legislative drafting, but the technicalities of legislative drafting, which may extend years into the future, can become important issues because then those of us here today who may have had similar understanding of what was intended will not be here to explain it.

Basically, one of the concerns that has been expressed is that the drafting of the 1978 act putting the Inspector General under general supervision of the agency head is consistent with the authority structure in legislation of domestic agencies. In the basic statute creating the system of responsibilities in the Defense Department, different language is used, and I would presume that it would be used recognizing the concerns we have in maintaining control over the military.

That language says those reporting to the Secretary of Defense are under the authority, direction, and control of the Secretary of Defense. So, we have domestic agencies who have the legislative phrase used, "under the general supervision of" in their basic statutes, and in Defense we have the same language as "under the authority, direction and control of." Thus, I think that to have the Inspectors General on a parity in the authority structures of the domestic agencies and the Defense Department, we should use the same language that is in their basic statutes.

Senator **Eagleton**. Passing for a moment the question of legislative drafting, which can be important, and we must keep that in the back of our minds, I would like to dwell solely on the substantive issue of the independence of the IG. When we set up the IG in the other Departments, we felt, and I still believe now, that in order for the Inspector General to function effectively, he needs, if not total independence, something pretty close thereto. If the Inspector General is accountable to the Secretary, and the Secretary controls and directs the Inspector General, then the Inspector General loses the investigative independence that we want him to have.

So, we set it up as an Presidential appointee, and we also set up provisions, so that he would also report to Congress for purposes of our legislative oversight.

I concede that in a few instances in the Department of Defense there could be national security implications in what the Inspector General is looking into, and we must take that into account. But I wonder if we have to go a full 180° in the opposite direction to take that into account.

Here is how we drafted language for the other Inspectors General.

> The Inspector General shall report and be under the general supervision of the head of the establishment, but shall not report or be subject to supervision by any other officer of the establishment.

There is similar language creating the independent Inspectors General in these other Departments. Your proposal is just to turn it 100 percent the other way, to have it read, "Notwithstanding the provisions of 3-A or any other provision of this act, the Inspector General of DOD shall be under the authority, direction and control of the Secretary of Defense."

Why don't we contemplate approaching it this way: Set up the Inspector General as independent, tracking with what we have done in the previous legislation, but then put in a limited proviso so that a national security situation should be exempted. A secret weapons system would be a good example where DOD is now working on weapons systems that are highly secretive—take for example the revelation in this morning's paper monitoring devices have been set up in the People's Republic of China.

Let's assume the Inspector General was starting to get in that area, it had not been publicly revealed, and the President did not want it publicly revealed, because it had security implications. In that case the Secretary of Defense would say, "Hey, back off from that because that is not yet in the domain and shouldn't be."

Why do we have to shift 180° on the independence issue? Why don't we carve out a narrow exception for national security, but in all other matters give him the kind of independence the other Inspectors General have? He ought to be completely independent to look into the F-18. If it is a turkey and everybody knows we are building an F-18 and there is no secret about it, why shouldn't the Inspector General in an independent way be able to look into it? Going back to the day of the C-5-A, if it were a turkey, why shouldn't the Inspectors General have complete independence to look into the cost overruns, waste, inefficiency, mismanagement of that program? The same holds for the XM-1 tank of today?

Why shouldn't he be independent in all of those areas, none of which have national security implications since there is widespread public knowledge about these weapons systems in any event?

Mr. **Harper**. Senator, let me respond in this way: The legislative drafting language is one issue. The difference in phraseology between "under the general supervision of and under the authority, direction, and control of" I think can be viewed as equating languages recognizing the context in which they are placed. I think it would not be inappropriate for the language that would be used would track the 1978 language which might say, for example, that, "However, neither the Secretary of Defense nor his deputy shall prevent or prohibit the Inspector General of the Department of Defense from initiating, carrying out, completing any audit or investigation or from issuing subpenas during the course of any audit or investigation." Here we would make that rare exception, "except and unless the Secretary of Defense vetos the actions." In other words, provide complete freedom for the Inspector General to do all the things you talk about, except and unless the Secretary vetos it; and then the Secretary by this statute would have to report the reasons for that veto to the chairman and ranking minority member of the appropriate committees.

I think that achieves the kind of independence that you are looking for. In fact, it might be a way to track the 1978 act.

Senator **Eagleton**. That language doesn't offend me. What I am focusing on is the basic authority for the Inspector General, the language that we are dealing with, the authority to actually control the Secretary of Defense. I know that it is boilerplate language in DOD legislation. It has apparently been in statutes pertaining in DOD for years.

What I am saying is that in the initial authority, shouldn't the Inspector General be granted substantial independence which should be modified or limited only in highly sensitive areas of national security, a secret weapons system, et cetera?

Mr. **Harper**. I think that we need to take the two phrases together. I think we do have a concern I outlined earlier: That while we here today we may have a sense of what we have in mind, I think we have come to feel that it is important that the language in this legislation track the fundamental organic statutes under Defense and Justice as it does on the domestic side.

Senator **Eagleton**. My time is up. I will close with this comment and I will have some questions of course, for the DOD witnesses when they come forth. I frankly don't think the administration's proposal goes far enough. What it in essence does is make an Inspector General office out of the Defense Audit Service, and it would start off with a staff of 500.

Bear in mind that in the Defense Department across the board there are some 18,000 auditors and investigators, including the armed services.

So out of 18,000 auditors and investigators, you are going to set up an Inspector General with 500 out of DAS, which has heretofore not had very much clout within the Department of defense in any event.

It has been sort of a stepchild. And clearly, if you are trying to set up a strong Inspector General, with independence of action, and you take one of the weakest links of DOD that is, DAS, and just transfer 500 people from DAS and a few others they pick up, I just wonder whether that is the kind of strong independent Inspector General that I think both of us want to see operate within the Department of Defense.

Mr. **Harper**. May I comment on the Senator's point? The numbers game with respect to Inspectors General is always a difficult one. There are different ways to arguing what are the appropriate resources for an Inspector General. For example, one might say we already spent $244 million for domestic Inspectors General last year and that is a cash outlay. How much cash will we get back?

If you just look at cash in and cash out, there will be some question in your mind as to whether or not that is a good investment, frankly I think it is a good investment because I think some of those softer numbers, the $300 million that we didn't spend, are probably good numbers. There is some merit to that. I think the question is the cost issue and the preventive issue.

I think all these things need to be taken into account. It is hard to come up with what is the right number for resources.

Furthermore, I would think—there are some different management philosophies we can look at in trying to assess what is the proper structure for an Inspector General operation in Defense. Do we have a lot to gain by aggregating everybody into one pot or are there some economies of scale when you try to to provide central direction to that kind of situation? I think it is a judgment call. I think it is one we ought to hear directly from the Defense Department on as to their management philosophies and how they get to it. I think the independence and the strength of the Inspector General in the Defense Department comes primarily from some of the things we talked about before. The fact is that he would be a presidential appointee confirmed by the Senate, that he does have this relatively unlimited power that we talked about to investigate, to audit, to subpena.

I think his formal reporting relationship to the Secretary or the Deputy Secretary, is one of the kinds of things that make the real power. Plus 500 people is a good start in terms of perhaps leveraging on those other 18,000 individuals who are in the Defense Department to carry out special projects and investigations.

Senator **Eagleton**. To clarify a point, I am not recommending we transfer all 18,000 to the IG. Far from it. I think the 500 is too modest for a beginning and we will probe that with the Defense Department witnesses.

Thank you, Mr. Harper. Thank you, Mr. Chairman.

Chairman **Roth**. Senator Pryor?

Senator **Pryor**. Mr. Harper, the Congress did something in 1979 that worried me a great deal. I don't know if it worried anyone else as much as it did me, but we abolished the Renegotiation Board. That kind of got to be a sticky subject around here. I think the Chairman was not too popular, was not a good witness, whatever. It was a small agency to prevent cost overruns.

We don't have any group right now or any organized effort, it appears to me, in the Department of Defense, or any other department, to prevent cost overruns and to serve as a watchdog. Would the Inspector General basically step into this role the Renegotiation Board used to perform in this capacity?

Mr. **Harper**. I am not an expert on the Renegotiation Board's activities. I think their activity, in fact, may have gone a little bit further than being a watchdog activity. I think the prime watchdog on cost overruns has to be the Secretary of Defense and the Deputy Secretary of Defense as the top managers of that Department.

But, indeed, the Inspector General has a broad responsibility to be concerned about cost overruns.

As a matter of fact, you may have seen some articles in the paper just recently about our Inspector General in NASA who started questioning some apparently misapplied costs on a contract regarding the Space Shuttle.

And this matter is, I believe, now in litigation.

Senator **Pryor**. We are about to appropriate, I imagine, the largest defense budget in peacetime that we have ever appropriated. I will be honest with you, I don't know it the Defense Department can use this money efficiently. I am one of those who is very, very concerned about it. I don't know if we are doing ourselves and our national defense posture any real favor on the amount of this appropriation.

In fact, I was asking some of my colleagues the other day if they would support an amendment I was going to offer to decrease the Defense Department appropriation by $1.39. The answer was it depends on what you are going to do with the $1.39. I think that's the sort of—I don't want to say the mentality, but at least that is the mindset seemingly of the Congress today with regard to the sancrosanct nature of the defense budget.

I strongly feel that in the Department of Defense, when we look at $30 billion—$30 billion—last year on sole source contracts with no competition and we know from all authorities from GAO on, that we can save from 20 to 25 percent by competitive bidding, I am wondering if we could not save $6 yo $7 billion painlessly by competitive bidding and certainly I am wondering if the Inspector General would be that entity that would supervise the competitiveness of the bidding. Would that be the proper function for the Inspector General's office?

Mr. HARPER. I think as we have indicated, the Inspector General in the Defense Department would have broad-ranging responsibilities and opportunities to investigate virtually any activity.

Senator PRYOR. Related to fraud, I can see that clearly. What about just general day-by-day business where there might not be fraud to see if the competition was fair and if the contractors had the right to bid, would the Inspector General supervise and monitor the bidding procedure utilized by DOD?

Mr. HARPER. As a matter of fact, that is an important role of many of the auditors already in the Defense Department.

Senator PRYOR. Why is it they have the opportunity to spend $30 billion sole source without any bid?

Mr. HARPER. I will yield to the witnesses from the Defense Department to respond.

Senator PRYOR. I may ask that question of them a little bit later. Mr. Chairman, at this point that is all the questions I have.

Chairman ROTH. Thank you, Senator Pryor. Dr. Harper, I would like to underscore some of the concerns that have been expressed because everyone feels very strongly that although we need to do a great deal more to build up our defense, we are also very concerned that it is done in a competent manner and not in the sort of boom and bust we have had in too many programs, not only at Defense, but in some of the domestic programs.

As I said, when you came before us for confirmation, this committee will be looking to OMB and to you in particular to insure that we are doing everything humanly possible to see to it that the money in the Department of Defense is well spent. I think we face a very serious challenge here.

I have to agree with Senator Pryor that if we pour out too much money too fast all we do is inflate the price. A couple of years ago the Finance Committee gave some support to wood-burning stoves, I think it was tax credits for people to buy them. All we ended up doing was increasing the price so nobody benefited.

I am really very concerned that as we lay the fiscal groundwork that we have a strong, steady growth and not a boom and bust situation which would be a very serious problem.

Mr. HARPER. I think that is true with any program. We have to be concerned with that.

Chairman ROTH. Thank you, gentlemen. I appreciate both of you coming before us.

Mr. HARPER. Thank you, Mr. Chairman.

[Mr. Harper's prepared statement and responses to written questions submitted by Senator Roth follows:]

PREPARED STATEMENT OF EDWIN L. HARPER, DEPUTY DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET

Mr. Chairman and members of the committee: I appreciate this opportunity to discuss proposals to extend the provisions of the 1978 Inspector General Act to the Departments of Defense and Justice with you.

As I noted in testimony when the House of Representatives was considering H.R. 2098, "Inspector General Act Amendments of 1981", the President supports legislatively mandated Inspectors General. We believe that the key to the strength of legislatively mandated Inspectors General is their enhanced ability to operate objectively and independently. This objectivity enables each Inspector general to contribute positively to our governmentwide effort to eliminate waste and fraud.

We continue to support the establishment of legislatively mandated Inspectors General not only in the Departments of Defense and Justice, but also in the Department of the Treasury and the Agency for International Development.

The Committee wishes to know how the Administration perceives the role of the Inspector General in these Departments as well as any views we may have on the recently passed House bill, H.R. 2098. I will be pleased to address both of these points.

THE ROLE OF THE INSPECTOR GENERAL

We believe that for the Inspector General concept to be most effective in agencies, like Defense and Justice, it needs to be tailored to take into account the unique and sensitive characteristics of each. We have been working closely, positively, and productively with this Committee's staff over the past several weeks to develop the legislative provisions that would adequately reflect the unique mission requirements of Defense and Justice. Today we would like to offer some specific suggestions on what those Inspector General operations should entail. First, however, let me address this Committee's interest in our comments on H.R. 2098.

H.R. 2098

H.R. 2098 emphasizes the essence of the strength of legislatively mandated Inspectors General as provided by the Inspector General Act of 1978. The 1978 Act provides considerable independence to Inspectors General because of several factors: they are presidential appointments; they have a formal reporting relationship to their agency heads along with a specific reporting responsibility to Congress; the report to the agency head and not to operating or staff officials whom they audit; they are independent of operational responsibilities; and they have formal communications with the Executive Office of the President/Office of Management and Budget, the Department of Justice, and the FBI via the President's March 26, 1981, Executive order on Integrity and Efficiency in Federal Programs.

Our experience shows, however, that independence alone is not enough. The most effective Inspectors General have been those who have established constructive working relationships within their agencies and have been able to function as important parts of their agencies' management teams. If an Inspector General cannot be viewed by an agency head as a resource to help improve management his value both to the agency and the cause of honest and efficient government is seriously limited.

This is perhaps the principal reason for our belief that the Inspector General concept should be tailored to the unique characteristics of the agencies—to help the Inspectors General to work constructively within each agency's management structure. It neither needs to or should impair the Inspector General's ability to act objectively.

While we believe that H.R. 2098 begins to recognize and address this need, we will suggest additional points for this Committee's consideration which we believe would result in strong and independent Inspectors General who can operate as effective parts of their agency management teams.

H.R. 2098 also represents a forward step by including language that would compensate all of the legislatively mandated Inspectors General at the same rate, level IV. We endorse this provision, believing that Inspector General positions are equally complex regardless of agency.

ADMINISTRATION RECOMMENDATIONS

The individual agencies that will testify will be providing specific details on the Administration's suggestions including the suggested composition of the Offices of Inspector General. What I would like to do now is highlight the basic suggestions for you. They are designed to accomplish two objectives: Provide meaningful safeguards to assure objectivity in Inspector General operations, and accommodate the unique and complex characteristics, missions, and functions of the involved agencies.

Defense.—The principal recommendation concerning an Inspector General for the Department of Defense involves the relationship between the Secretary of Defense and the Inspector General. Our approach would permit the Secretary of Defense, using his judgement about matters relating to the interests of national security to require the Inspector General not to undertake a given audit or investigation. However, to prevent any abuse of this authority, the Secretary would be required to notify the appropriate Congressional Committees in the rare cases when such action was being taken.

Justice.—The principal suggestions relating to the Justice Department are designed to avoid problems that could hinder the Department's ability to carry out its litigative and law enforcement responsibility. The major suggestions would insure that the Attorney General remains strictly accountable for the discretionary determinations in law enforcement and litigation, while at the same time enabling the Inspector General to review all functions of the Department which can be evaluated by cost/effectiveness standards, and would recognize the special nature of the use of subpoena authority in the Department of Justice.

When the President established the President's Council on Integrity and Efficiency on March 26, he specifically identified important members in addition to the current statutory Inspectors General. These included representatives from the Departments of Defense, Justice, and Treasury, and the International Development Cooperation Agency, of which the Agency for International Development is a significant part. This was done in anticipation of having statutory Inspectors General in those agencies in the near future. We will be happy to continue to work with the Committee to help establish a legislatively mandated IG in each of these agencies.

I would be pleased to answer any questions you may have.

RESPONSES TO WRITTEN QUESTIONS SUBMITTED BY SENATOR ROTH

Question 1. Hasn't the inclusion of the Department of Defense, Justice and Treasury on the President's Council on Integrity and Efficiency given recognition to the need for an IG at these departments?

Answer. When the President established the President's Council on Integrity and Efficiency on March 26, he specifically identified important members in addition to the current statutory Inspectors General. These included representatives from the Departments of Defense, Justice, and Treasury, and the International Development Cooperation Agency, of which the Agency for International Development is a significant part. This was done in anticipation of having statutory Inspectors General in those agencies in the near future.

Question 2. GAO reports show that Defense lacks the sort of audit resolution system needed to comply with OMB Circular A-73 in reference to follow-up in audit reports. Defense has worked to establish such a system for two years, but is apparently not functioning to the degree envisioned by OMB.

Do you believe a Defense Inspector General can assist in establishing an adequate resolutions system to comply with OMB Circular A-73?

Answer. Audit followup or resolution is an on-going concern of the Administration. In the past, follow-up on audit recommendations has not always been as strong or effective as we believe it should be. The statutory Inspectors General have experienced many of the same problems and frustrations that auditors in non-statutory Inspector General agencies have experienced. A statutory Inspector General, therefore, is not a guarantee of appropriate followup and resolution of audit findings.

The President recognized this point in a March 26, 1981 memorandum to the heads of the agencies having statutory Inspectors General. In that document, which emphasized the President's commitment and priority for reducing fraud and waste in Federal programs, he stated:

"I expect each of you to provide the necessary support and cooperation to assure that our objective is accomplished. One specific action I am asking you to take is to designate an individual at the Assistant Secretary level or higher who will have the responsibility for following up on the recommendations of your Inspector General and Accounting Office."

Some agencies, of course, have developed stronger follow-up systems than others. Through the President's Council on Integrity and Efficiency we will share the successful approaches and methods with other agencies, including Defense.

Question 3. The key issues here seem to be the question of independence of the IG. How can it be assured that sufficient independence will exist to allow the IG to do his or her job adequately and objectively?

Answer. We believe that the following factors assure sufficient independence to allow an IG to do his or her job adequately and objectively: They are presidential appointments; they have a formal reporting relationship to their agency heads along with a specific reporting responsibility to Congress; they report to the agency head and not to operating or staff officials whom they audit; they are independent of operational responsibilities; and they have formal communications with the Executive Office of the President/Office of Management and Budget, the Department of Justice, and the FBI via the President's March 26, 1981, Executive order on Integrity and Efficiency in Federal Programs.

Question 4. Mr. Harper, during hearings of the House Legislation and National Security Subcommittee on March 8, 1981 you testified that:

"The President supports the type of legislatively mandated IG called for in H.R. 2098. We believe that the key to the strength of legislatively mandated IG's is their ability to operate objectively and independently."

Could you explain your concept of independence and the testimony you gave on the House side?

Answer. Our concept of Inspector General independence is outlined in response to question 3 above. This is the same concept on which our March 8, 1981 testimony before the House Legislation and National Security Subcommittee was based. We went on to say, both on March 8 and at the June 18 hearing of this Committee, that our experience shows, however, that independence alone is not enough. The most effective Inspectors General have been those who have established constructive working relationships within their agencies and have been able to function as important parts of their agencies management, teams. If an Inspector General cannot be viewed by an agency head as a resource to help improve management his value both to the agency and the cause of honest and efficient government is seriously limited.

This is perhaps the principal reason for our belief that the Inspector General concept should be tailored to the unique characteristics of the agencies—to help the Inspectors General to work constructively within each agency's management structure. It neither needs to nor should impair the Inspector General's ability to act objectively.

Chairman ROTH. Mr. Taft, it is a great pleasure to welcome a member of one of America's great families. I am delighted to have you here today. You can summarize, if you choose, your statement and the full statement will be included as if read.

TESTIMONY OF WILLIAM HOWARD TAFT IV, GENERAL COUNSEL, DEPARTMENT OF DEFENSE, ACCOMPANIED BY JOSEPH H. SHERICK, ASSISTANT TO THE SECRETARY OF DEFENSE FOR REVIEW AND OVERSIGHT

Mr. TAFT. Thank you very much, Mr. Chairman. It is a pleasure to be here. I would like to introduce Mr. Joseph Sherick, who is accompanying me today. He is the new Assistant to the Secretary of Defense for Review and Oversight. Mr. Sherick has a short statement as well, which he would like to give after I have completed mine.

I will attempt to summarize my statement, if I may, and I request that my entire written statement which has been submitted previously, be placed in the record.

I think it is important at the outset of my statement to stress that the Department of Defense strongly supports the efforts implicit in the proposal to create the Inspectors General in the Defense, Treasury, and Justice Departments in order to eliminate fraud, waste, and abuse in Government programs.

We also specifically support the establishment of an Inspector General to accomplish those goals in the Department of Defense. I mention this Department's support for these efforts because on occasion the Department's concerns about specific legislative proposals that have been made to create an Inspector General in our Department have overshadowed this basic position of support, and I don't want our reservations about specific provisions to be misinterpreted in that way.

As you are well aware, the administration strongly believes that we have to increase spending in the defense area immediately and significantly. Our budget proposals reflect this. However, we think it would be irresponsible to authorize increased defense expenditures without at the same time making sure that every dollar, not only those added to the Defense budget, but every dollar that previously has been authorized and appropriated, and continues to be available for defense purposes is spent with maximum effectiveness and not wasted. When Secretary Weinberger arrived at the Department in January, he gave this matter his highest priority.

I think the appointment of Mr. Sherick to a high level position, reporting directly to Secretary Weinberger, to deal with fraud, waste, and abuse is evidence of the concern that the Secretary has shown for this problem.

I would like to take a moment to explain more fully the Inspector General issues as they relate to this Department, and I think it would be helpful to briefly address the background of this legislation. The question of what is so special about the Defense Department, and why it should be treated differently from other Federal Departments and agencies which now have statutory Inspectors General, has been raised by the Congress.

I think the history of this legislation is relevant in that connection.

The question of establishment of an Office of Inspector General in Defense has been under consideration for almost 3 years. When the Inspector General Act of 1978 was passed, Congress considered applying that act to the Department of Defense, but the determination by the Congress at that time was that creating an Inspector General for DOD should not be done in the same manner as was being done for the domestic agencies without further study.

Consequently, a task force was established to conduct a study as to what would be the appropriate structure for an Inspector General-type effort in this Department. I am sure the members of this committee are familiar with this study and the task force's recommendations. I think it is very significant that the task force recommended against applying the Inspector General Act of 1978 to the Department in the basic form in which it had been applied to other Departments and agencies.

Instead, the task force found that the needs of DOD could best be served by a high-level review and oversight office in the Office of the Secretary of Defense to oversee the Department's considerable efforts to combat fraud, waste, and abuse, and it suggested that the head of this office should be a member of the Secretary's management team, reporting directly to him.

The task force's specific recommendation was that there be established an Under Secretary of Defense for Review and Oversight. We have created the Assistant to the Secretary of Defense for Review and Oversight. The reporting relationship, I would emphasize, is precisely the same. An additional Under Secretary slot would require legislation, as indeed an Inspector General would. We would not object to the institutionalization by legislation of the Assistant to the Secretary position as an Inspector General.

So that on that issue, I think the important points are the reporting relationship to the Secretary, the high level of the official, and his authority within the Department. All of those aspects of the position are precisely the same as recommended by the task force.

There is, however—and this should be emphasized—a fundamental difference between the position which Secretary Weinberger has administratively established and the Inspector General which H.R. 2098 would impose on the Defense Department.

The Secretary's proposal adds a senior official to his management team. That official is fully responsive to the Secretary and has direct access to him. He is also able to provide much-needed assistance to the Secretary in routing out wasteful and inefficient programs.

The national security responsibilities of the Defense Department make it imperative that an Inspector General in DOD have a clear reporting relationship within the command structure. In contrast, the Inspector General established by H.R. 2098 would be an independent official capable of departing from the Secretary's principal areas of concern and/or emphasizing his own priorities.

The unique operational and intelligence requirements of DOD require, in our view, that any such official operate under the authority, direction, and control of the Secretary of Defense as is the case for every other official in the Department.

Although DOD concerns about provisions of H.R. 2098 were brought to the attention of the House Government Operations Committee through testimony, discussions with staff, and discussions of alternative language in which I participated, and also Mr. Harper of OMB, none of the provisions in that bill when it was passed by the House addressed our concerns. Significantly, however, the Department's objections were readily understood by House Members with interest and involvement in issues of military organization and mission.

Representative Stratton forcefully, but unsuccessfully, argued on the House floor that the Armed Services Committee should be given the opportunity to consider the impact of H.R. 2098 Inspectors General upon DOD's operations. The chairman and ranking minority member of the House Armed Services Committee, along with four subcommittee chairmen and four subcommittee ranking minority members voted against the passage of H.R. 2098 for the reason that the concerns of the Department of Defense had not been met.

Let me just briefly outline the specific objections that we have. First, as I mentioned, the traditional language used within the Department when defining a relationship between the Secretary of Defense and other DOD officials is "authority, direction, and control."

This language reflects the requirement of control which is essential to any military organization. H.R. 2098, as it amends the Inspector General Act of 1978, would place the proposed DOD

Inspector General only under the "general supervision" of the Secretary.

Moreover, it is clear that the Inspector General established by H.R. 2098 and its precursor, the Inspector General Act of 1978, are independent officials with specific statutory authority to set their own agendas, and review and evaluate any and all programs and decisions of the Department or agency in which they are located. A provision of the 1978 Act specifically protects this independence from objection by the Secretary of the Department.

I refer specifically to sections 3(A), 4(A)(1) and 6(A)(2) of the Inspector General Act, all of which would be applicable to the Inspectors General which would be created by H.R. 2098.

The provision which prohibits the Secretary or the Deputy Secretary from directing the Inspector General to undertake particular audits they believe are important, or from interfering with the IG's continued conduct of investigations and audits they might feel would jeopardize important national security interests are most significant in this connection.

Those provisions which would establish the independence of the Inspector General in the Department of Defense are completely inconsistent with the hierarchical commander subordinate relationship that is at the heart of any military organization, and is embodied in the chain of command.

These provisions do not encourage the individual to work with the Secretary as part of his team. In our view, the Secretary of Defense must have the ability to terminate any review process or investigation that the Inspector General may initiate which would jeopardize national security.

However, I want to say that even though we believe the Secretary has to have that authority, we recognize that the instances in which it would have to be exercised are extremely rare. That they are rare does not mean, however, that they are unimportant. We are willing to suggest, however, in order to be sure that the authority of the Secretary we would obtain by this provision will not be abused, that in those rare cases where the Secretary needs to terminate an audit or an investigation in the interest of national security, that the Secretary would have to report his action, and the reasons therefore, to the relevant committees of the Congress; and I would say in response to your earlier question to Mr. Harper, we anticipated such reports would include the Armed Services Committees, and, if it were in the intelligence areas, the Intelligence Committees, but I would have no objection to reporting such a veto to whatever committees the Congress itself felt were the right ones to report to.

Another aspect of H.R. 2098 which is of concern to this Department is the proposed transfer of the Defense Contract Audit Agency, DCAA, and the Office of the Inspector General of the Defense Logistics Agency to the operational control of the proposed Office of the DOD Inspector General.

DCAA advises DOD acquisition officials and audits contractors' financial procedures and operations, both for DOD and for many civilian agencies' Inspectors General.

Its principal mission is an advisory role in the acquisitions process, helping the contracting officer in determining in advance of an award of contract what would be a fair price—not to oversee DOD operations. DCAA is simply not primarily a review and oversight organization. It is an integral part of the day-to-day program management. The Defense Logistics Agency acts as a single manager for DOD for a variety of logistics services, procurement, supply and management of material and contract administration.

The Inspector General of DLA, which H.R. 2098 would transfer to the Inspector General created under that bill, is concerned with inspections in supply areas and surveys concerning the efficiency, effectiveness, economy, morale and discipline, within the agency primarily an internal operation.

The DLA Inspector General does not have resources which are primarily dedicated to investigations or audits for fraud and abuse, and is not at this time undertaking those sorts of activities. Those activities would be accomplished by DCAA or the Defense Audit Service if they were strict audit, or by the Defense Investigative Service if they were investigations.

It appears to me that the primary difference between the administration proposal which is forthcoming—and I understand some drafts have been circulated—and some of the provisions of H.R. 2098, is the question of independence. I know that Congress has been greatly concerned that the independence and, thus, effectiveness of auditors and investigators could be severely hampered by having to report to third or fourth level managers who manage the programs being audited or investigated, and this point has been made here again this morning.

We believe establishment of an Assistant to the Secretary of Defense for Review and Oversight has effectively solved that problem because that individual reports directly to the Secretary and this would also be the case for the Inspector General, of course, and we support that. The Assistant to the Secretary of Defense would be subject solely to the authority, direction and control of the Secretary. He will have access, I should say, to all of those people, other persons in the Department who work on these matters.

Extension of the Inspector General Act of 1978 to the Department of Defense in the form proposed in H.R. 2098, without substantial modifications, and without any recognition of the unique aspects of the Department's mission, functions, and organizational structure could, contrary to the decades-long expression of the intent of Congress, also undermine the limitation that Congress has imposed to preserve separate identities for each military department within the Department of Defense.

These concerns are further addressed in my written statement.

One other aspect of the act that raises a potential problem for this Department involves the impact such an Inspector General would have on DOD law enforcement activities. As you know, like the Justice Department, we have the military justice system that we run within the Department.

We would not want the Inspector General to be interfering with the prosecutorial decisions, the same sorts of decisions the Justice Department has expressed a concern about. The Inspector General could disrupt the military command's lawful exercise of criminal investigations and law enforcement responsibilities under the Uniform Code of Military Justice.

We want to be sure that would not happen.

Under the present situation at DOD, with the establishment of the Assistant to the Secretary of Defense for Review and Oversight, the Secretary continues as the single individual responsible to the Congress for the efficient management of the Department. Just as he is the single individual to whom the President as Commander in Chief now looks in order to direct and control the activities of the Armed Forces, Secretary Weinberger would continue to be the individual solely responsible for and answerable to Congress concerning all matters related to strategic, military, and intelligence operations of the Department. In this regard, the Secretary's creation of the Assistant to the Secretary of Defense position reflects his commitment to combatting fraud and waste—a commitment he has demonstrated throughout his career in public service—through an official who reports directly to him.

Mr. Chairman, we firmly believe the establishment of the position of the Assistant to the Secretary of Defense for Review and Oversight by Secretary Weinberger goes a long way toward resolving concerns of proper oversight of this Department's efforts to discover and deal with the problems of fraud, waste, and abuse—concerns which we share with this committee and with the Congress.

I certainly agree with Senator Eagleton's statement, this is not a partisan issue, this is not an executive-legislative branch issue. It is one of highest priorities for us in the Department, and I am sure for the Congress as well. The difference between the Department's approach and that of H.R. 2098 is that ours takes into account the peculiar nature of DOD's function and management structure while the House bill would treat the Department as if it were administering a variety of domestic grant programs instead of carrying out military operations and activities.

I appreciate the opportunity to appear before you and will be glad to answer any questions you may have.

Mr. Sherick also has a short statement.

Mr. SHERICK. Thank you. Good morning Senator Eagleton and Senator Pryor. I appreciate the opportunity to testify before the committee today to discuss with you the duties and functions of my office.

I think it should be said at the outset that Secretary Weinberger is fully committed to a strong and aggressive program, for reducing and whenever possible, eliminating fraud, waste, and mismanagement in the Department of Defense. I share and fully support his commitment. I intend to utilize all resources available to me to insure that the program touches and involves all departmental activities, and is an item of personal concern to each military service member, civilian employee, contractor, and contractor employee, participating in defense programs.

I would like to describe briefly to you my charter. First I have been designated to serve as the principal adviser and assistant to the Secretary of Defense for matters relating to combatting fraud, waste, and abuse in all DOD programs and operations. As such, I will be active across the board in the Department of Defense in initiating, directing, and coordinating programs aimed at preventing, detecting, and eliminating fraud and mismanagement.

I have been assured by the Secretary that I will have direct access to him on any occasion.

In addition to this general responsibility, I have been assigned specific authority in the areas of audit and criminal investigation. These include developing policy, monitoring, and evaluating program performance and providing guidance to all DOD activities on matters regarding criminal investigation programs. I am responsible for conducting criminal investigations in the Office of the Secretary of Defense, the Organization of the Joint Chiefs, the unified and specified commands, and the defense agencies, including the Defense Logistics Agency.

I am also responsible for oversight and evaluation of all audit activities in DOD.

I am further responsible for developing policy, evaluating program performance and monitoring followup actions taken by all DOD components in response to General Accounting Office reports and the contract audits, internal audits and internal review reports in the Department of Defense.

I view this as a critical part of my responsibility where I will be required to make a judgment on whether specific audits or review recommendations could, if implemented, improve efficiency or effectiveness of DOD programs and operations. In those cases where significant savings or efficiencies appear possible and management change beneficial, but management has been unwilling to comply, I am charged with elevating the issue to the Secretary of Defense for resolution and making recommendations concerning that resolution.

I also exercise direction, authority and control over the Defense Audit Service.

In concluding my brief statement, I would like to highlight a few other areas where I think my office will be very actively engaged. I will be working closely with the President's Council on Integrity and Efficiency to achieve coordinated governmentwide attacks on fraud and abuse involving more than one Federal agency. I will be cooperating closely with the other Inspectors General in the civil agencies to insure there is both an exchange of ideas in methods and techniques as well as careful coordination of all investigations and audits which involve DOD with other agencies.

I have outlined my responsibilities, organizational structure and important areas of attention. Mr. Chairman, I believe my present charter provides me with the authority necessary to fulfill my functions and responsibilities. I have reviewed H.R. 2098 and believe I can successfully operate under that bill as modified to meet the Department's concerns. I, therefore, support the establishment of a statutory Inspector General.

As a career civil servant with over 35 years of government experience at every level, I feel I am fully equipped to understand the management problems of the Defense Department and I am well able to address the issues of fraud, waste and mismanagement. I am presently on the job. My office is functioning. Projects are under way and as a member of the Secretary's senior management staff, I meet with him daily to discuss matters of fraud, waste, and mismanagement.

Mr. Chairman, that concludes my brief remarks. I will be pleased to respond to the committee's questions. I would also like to submit the full text of my statement for the committee hearing record.

Chairman ROTH. I want to underscore whether it is the Department of Defense or any other agency—I strongly agree with the President's strong support for the Inspector General concept. Speaking for the administration during the hearings of the Legislation and National Security Subcommittee on March 8, 1981, Mr. Edwin Harper said:

> We believe the key to the strength of the legislatively-mandated IG's is their ability to operate objectively and independently.

I am somewhat concerned about some of the testimony you have given us today because we are dealing with a military organization. It is inherent in our form of government that the civilians control the military and Congress has a very important responsibility in that area.

I for one think that independence is as important in the Department of Defense as it is anywhere else. This is not just a military organization. It has much broader responsibility and with our concepts of civilian control, it is critically important that we insure by statute that there is an independent look being taken at military expenditures.

As I understand your testimony, DOD is supporting a statutory-created Inspector General.

Mr. TAFT. We do, sir; yes, sir.

Chairman ROTH. The sole exception being that proposal that where for national security reasons the Secretary could step in and prevent an audit from being made with the understanding that the appropriate committees of Congress both in the House and the Senate would be advised?

Mr. TAFT. That is our view of authority that the Secretary must have, yes, sir.

Chairman ROTH. Let me ask you this question: Do you envision that the proposed new Inspector General would be permitted to come forth before the Congress to testify even though his views may be in conflict with the Secretary of Defense?

Mr. TAFT. Yes; I think the new Inspector General would be permitted to testify under the usual system that we have for congressional testimony.

Our practice is to make available to the Congress any witnesses that they wish to hear on any occasion. The witness would state what their views were in response to any questions asking for those views. Where those views might differ from the Secretary's or the administration's views, I believe the practice now is for any military person or civilian official in the Department to state their own views, and to the extent they differed from the Secretary's views or the administration's position, the witness should make it clear that they were speaking for themselves and not for the administration. Within those guidelines, yes.

Chairman ROTH. That is appropriate, of course. Who would make the policy for internal financial review in Defense if we created the kind of Inspector General you are talking about?

Mr. TAFT. The Assistant Secretary of Defense—Comptroller—would have the principal responsibility for overall policy guidance for audit and internal review. The Inspector General, or ATSC/R. & O., would identify those areas he wished to get involved in and he felt were important, and would pursue them to the extent he felt necessary. He would also be responsible for monitoring and evaluating the performance of audit and internal review units, and for coordinating their efforts to combat fraud and waste.

Chairman **Roth**. I think there are two basic principles that are important. One is the fact that the Inspector General should determine the policies of audit, what he is going to do, subject to that possible veto that we have already discussed.

Second, I think it is extremely important that there be no misunderstanding that the Congress, the Senate, and this committee would expect the Inspector General, to be free to testify before this committee.

Mr. **Taft**. If I may add one thing, Senator, on the question of what the Inspector General would get involved in, we would hope that in addition to getting involved in the matters that might occur to him as being important, that if the Secretary of Defense had some matters he felt were important, that the Secretary would have the ability to direct the new Inspector General to use his troops to look at those as well.

I don't think the creation of an Inspector General would relieve the Secretary of that responsibility, or should deprive him of the ability to look into areas he is concerned with too, which the Inspector General may not have considered.

Chairman **Roth**. I understand what you are saying. At the same time, I think Senator Eagleton will ask you some questions in this regard, so I won't, but, if 500 or 600 is limited for the size of the Inspector General office, one could keep the Inspector General so busy in certain areas that he might not have time to investigate other areas which he thinks are more important.

Mr. **Taft**. That would not be a result we would hope for.

Chairman **Roth**. I have to go, Senator Eagleton, to another meeting for a few minutes. I would ask if you would be willing to preside and continue with the questions.

Senator **Eagleton**. Yes, I will, Mr. Chairman.

Chairman **Roth**. Thank you.

Senator **Eagleton**. [presiding]. Mr. Sherick, am I correct that there are some 18,000 individuals in the Department of Defense that in one form or another have something to do with auditing, investigating, accounting, and the like?

Mr. **Sherick**. Yes, sir, there are about 14,000 inspectors, investigators, and auditors and about 4,000 support people. That includes the Defense Contract Audit Agency.

Senator **Eagleton**. Yes.

There is an Inspector General for each of the services, is that correct?

Mr. **Sherick**. Yes, sir.

Senator **Eagleton**. Does the Marine Corps have one, also?

Mr. **Sherick**. Yes, sir.

Senator **Eagleton**. So there are four of those?

Mr. **Sherick**. Yes, sir. The Defense Logistics Agency also has an Inspector General, and the Defense Nuclear Agency, the Defense Communications Agency, the Defense Intelligence Agency, and

Defense Mapping Agency. There is also an Inspector General for Intelligence.

Senator **Eagleton**. Give us some illustrations of some typical kind of cases generically that the Inspector General perform.

Mr. **Sherick**. For instance, in the Defense Nuclear Agency, the Inspector General is responsible for inspecting the custody, control, and security of nuclear weapons. He is concerned with examining the procedures that are used for the maintenance, storage, and the whole life cycle of a nuclear weapon. It is a very specialized Inspector General type organization.

The military Inspectors General are basically involved with the readiness, discipline, morale, and welfare of the force. Those are their traditional missions. They are also concerned with economy, efficiency, organization, command and control and other similar matters.

As I say, they are concerned with use of resources, which is what brings them into waste, fraud, and mismanagement.

Senator **Eagleton**. And they also spend a lot of their time on personnel matters?

Mr. **Sherick**. Yes, personnel; morale, complaints, and that type of thing.

Senator **Eagleton**. Misdeeds by individual members of the armed services. That consumes a large percentage of their time.

Mr. **Sherick**. Where there are allegations in that respect, yes.

Senator **Eagleton**. How many people are involved in the four armed services IG's?

Mr. **Sherick**. There are about 5,200 professionals. There are about 2,500 who are career assigned and then there are about 2,700 augmentees. In other words, in many cases they could pick up specialists as they go into a certain area for inspection, such as communicators, or other people who have technical expertise in that area.

Senator **Eagleton**. If I hear those numbers, that is 5,200 professionals for the four armed services?

Mr. **Sherick**. Yes.

Senator **Eagleton**. And an appropriate number of support.

Mr. **Sherick**. About 800 support.

Senator **Eagleton**. How many are assigned to the staff of the IG of the Defense Nuclear Agency?

Mr. **Sherick**. The Defense Nuclear Agency has an Inspector General, one person, and then he has augmentees who pick up specialists.[1]

Senator **Eagleton**. One-person office, and he picks up people as he goes along. No permanent staff? How does it function?

Mr. **Sherick**. Inspections of nuclear weapons are performed by field command inspectors. These field inspectors will also be accompanied by representatives of the military departments when they perform their inspections. The military representatives, who number about 50, do not represent the DNA IG, but usually accompany the inspection party.

Senator **Eagleton**. Approximately 100 professionals?

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[1] Subsequent to the hearing, Mr. Sherick changed this sentence to read: "The Defense Nuclear Agency Inspector General has 38 permanent personnel and then also has 12 augmentees who pick up specialists."

Mr. SHERICK. Yes, sir, in total, including the service representatives.

Senator EAGLETON. What is the staff complement of the Inspector General for Intelligence?

Mr. SHERICK. The Inspector General of Intelligence has six people, four professional and two supports. He conducts a limited number of inspections, and also tasks the Inspectors General in the military services to assist him by making additional selected inspections.

Senator EAGLETON. Let's get to some of the others. DCAA, Defense Contract Audit Agency.

Mr. SHERICK. They have 2,824 professional auditors and approximately 600 support.

Senator EAGLETON. DAS?

Mr. SHERICK. Defense Audit Service has about 340 professional auditors and about 40 support personnel.

Senator EAGLETON. Defense Logistics?

Mr. SHERICK. In the Defense Logistics Agency, the Inspector General has 78 professionals and 24 support. The Defense Logistics Agency is audited by the Defense Audit Service.

Senator EAGLETON. It is the administration's proposal in setting up the IG in the Department of Defense to fold in DAS with 340 professionals and DLA with 78 professionals, is that correct?

Mr. SHERICK. No.

Senator EAGLETON. Not DLA.

Mr. SHERICK. The Defense Criminal Investigative Service with a staff of 100, including criminal investigators.

Senator EAGLETON. How many professionals?

Mr. SHERICK. They will have a staff of 100, with the final number of criminal investigators to be determined.

Senator EAGLETON. Are those, then, are the two entities that would be folded into the new Inspector General, DAS and Defense Criminal Investigative Service?

Mr. SHERICK. Yes.

Senator EAGLETON. Have we missed any other——

Mr. SHERICK. Well, yes. Of course each of the military services have their own audit services.

Senator EAGLETON. That is separate and apart from the Inspectors General of the four services who have 5,200 professionals. Each of the armed services has——

Mr. SHERICK. A central audit agency.

Senator EAGLETON. How many professionals in that?

Mr. SHERICK. The Army Audit Agency has 697 professionals and about 150 support.

Senator EAGLETON. And these are military audit agencies?

Mr. SHERICK. Yes, sir. In the Army they are almost all civilians.

Senator EAGLETON. Give me total professionals for all four.

Mr. SHERICK. Total professionals for all central internal audit agencies, about 2,400.

Senator EAGLETON. Have we missed any other?

Mr. SHERICK. Yes, the Army has an internal review activity and so do the Navy and Marine Corps. These are professional auditors who are resident at commands or installations and who report to the local commanders.

Senator **Eagleton**. Internal review?

Mr. **Sherick**. They are internal review.

They are for his use in auditing the activities and functions of his installation and activities.

Senator **Eagleton**. How many professionals are involved, roughly?

Mr. **Sherick**. Total Army, Navy, and Marine Corps, 1,581 professionals and 104——

Senator **Eagleton**. 1,500 professionals?

Mr. **Sherick**. Yes, sir.

Senator **Eagleton**. Prepare for us when you get back to your office a summary sheet.

Mr. **Sherick**. I have that. The other area I think I can talk about is the criminal investigation activity in each of the military services. The Army Criminal Investigation Command has about 1,500 professionals and about 700 support. These are a combination of military and civilian people.

The Naval Investigative Service has about 670 professionals and about 400 support. The Air Force Office of Special Investigations has 1,254 people and 680 support. The Defense Investigative Service, which includes the background investigators, which has about 1,000 professionals. They do background investigations for security clearance. They also do industrial security surveys for industrial plants. This includes Government employees, military personnel, and contractor employees who are candidates for a security clearance.

Senator **Eagleton**. We will put this summary sheet in the record at the appropriate point.

[The information referred to follows:]

DEPARTMENT OF DEFENSE INSPECTION, INVESTIGATION,* AND AUDIT ORGANIZATIONS
SUMMARY OF STAFFING

Inspectors General (as of 31 Mar 81)		Professional	Support	Total
Army Inspector General		1042	416	1458
Navy Inspector General	(Permanent)	124	50	174
	(Augmentees)	2556	-	2556
Air Force Inspector General		1279	277	1556
Marine Corps Inspector General				
	(Permanent)	17	10	27
	(Augmentees)	130	-	130
Defense Communications Agency Inspector General				
	(Permanent)	1	1	2
	(Augmentees)	5	-	5
Defense Intelligence Agency Inspector General		9	2	11
Defense Logistics Agency Inspector General		78	24	102
Defense Mapping Agency Inspector General				
	(Permanent)	1	1	2
	(Augmentees)	5	-	5
Defense Nuclear Agency Inspector General				
	(Permanent)	33	5	38
	(Augmentees)	12	-	12
Inspector General for Defense Intelligence		4	2	6
	Permanent	2588	788	3376
	Augmentees	2708		2708
Investigations (as of 31 March 1981)				
Army Criminal Investigation Command		1465	672	2137
Naval Investigative Service		668	422	1090
AF Office of Special Investigation		1254	680	1934
Defense Investigative Service		1043	734	1777*
		4430	2508	6938
Audit (As of 30 September 1980)				
Army Audit Agency		697	151	848
Naval Audit Service		472	60	532
Air Force Audit Agency		760	172	932
Marine Corps Field Audit		100	-	100
Defense Audit Service		341	38	379
Defense Contract Audit Agency		2824	587	3411
		5194	1008	6202
Military Exchange Audit Groups (as of 30 September 1980)				
Army and Air Force Exchange Service		66	6	72
Navy Resale and Services Support Office		18	9	27
Marine Corps Exchange Service		12	3	15
		96	18	114
Internal Review (As of 30 September 1980)				
Army Internal Review		1034	85	1119
Navy & Marine Corps Internal Review		547	19	566
		1581	104	1685
Grand Total	Full Time	13889	4426	18315
	Augmentees	2708		2708

*Does not include Industrial Security personnel transferred to DIS in October 1980.

Senator **Eagleton**. Does that fairly well complete the list of all the various entities that have something to do with investigative, auditing and the like?

Mr. **Sherick**. Yes, sir. A small number of others appears on the list which we are providing to you.

Senator **Eagleton**. And the total figure is 13,889 professionals, 4,426 support.

Mr. **Sherick**. Right. And the augmentees are professionals.

Senator **Eagleton**. There are 2,708 augmentees.

Mr. **Sherick**. Yes.

Senator **Eagleton**. So out of that vast array of inspection, investigation, and audit personnel, we are going to pull together in the Office of Inspector General, DAS with 340, and the Defense Criminal Investigation Service with 100 professionals.

Mr. **Sherick**. That is right.

Senator **Eagleton**. Mr. Taft testified, speaking of the Defense Contract Audit Agency, page 12 of his testimony:

> DCAA advises DOD acquisition officials and audits contractors' financial procedures and operations for DOD, and for many civilian agency Inspectors General. Its principal mission is an advisory role in the acquisition process, not oversight of DOD operations. DCAA is simply not primarily a review and oversight organization. It is an integral part of day-to-day program management.

That being the case, and I know that to be a fact, which of these auditing and investigating agencies has the principal mission of oversight and monitoring a contract once the contract has been entered into?

Mr. **Sherick**. DCAA does audit contracts after they are entered into. They review the pricing of the contract, but also review incurred costs during performance of the contract. That is a part of their audit function.

Senator **Eagleton**. But it is not primarily their function.

Mr. **Sherick**. Their prime mission is, first of all, to be an advisor to the negotiating team.

Senator **Eagleton**. Correct.

Mr. **Sherick**. When the negotiator has a request for proposal or bids for proposals, the auditor's first job is to go through those contractor proposals and look at the pricing, the overhead estimates, the whole spectrum, and make recommendations to the negotiator on various cost elements.

For instance, if a contractor in his proposal is recommending an overhead rate that is much different than he is using on his commercial contracts, the auditor would advise the negotiator of this fact, thereby alerting him to an area where he really ought to look very hard to see if the pricing is wrong. He advises the negotiating team and he does that for every bidder subject to audit review.

Finally, there is a successful bidder, and he gets an award. When he gets an award, at that point it becomes a contract. If it is other than firm fixed price, the Defense Contract Audit Agency is concerned with auditing costs incurred under that contract.

As Mr. Taft said, a primary activity is the initial review of proposals, contractor bids, et cetera, as an aid to the negotiating team. They are a very definite part of the negotiating team and their recommendations contribute to determination of the successful bidder.

Mr. Taft. Also, Senator, I think almost 20 percent of DCAA's audit work is for other agencies of the Federal Government: for NASA, DOT, any other Federal agency.

Senator Eagleton. This is where outside auditors are hired?

Mr. Taft. No, DCAA is hired by NASA, DOT on a reimbursable basis. About 20 percent of their audit work is essentially for other agencies.

Senator Eagleton. Still the principal mission, to use Mr. Taft's words talking about DCAA now, is an advisory role in the acquisition process, with respect to formulation of the contract role in the acquisition process, not oversight of DOD operations?

Mr. Sherick. What he is saying, the Defense Contract Audit Agency wants to involve itself in the negotiation process, it involves itself in auditing auditors. It does not involve itself in the process in the Department, the negotiators, the procurement process in the Department which is part of the DOD operations, those functions are dutied by the internal auditors of the Department of Defense, including Defense Audit Service, the Army Audit Agency, Navy Audit Agency, et cetera.

DCAA does not look at the internal operations of the Department. They limit themselves to the contractor's operations.

Senator Eagleton. Of the 2,800 professionals in DCAA, what percentage of their time is devoted to the advisory role in the acquisition process?

Mr. Sherick. It depends. I would say 50 to 60 percent.

Mr. Taft. We did an examination on that in connection with setting up Mr. Sherick's office. I think for last year—and it would vary from year to year—it came out to about 56 to 57 percent of the man-hours.

Senator Eagleton. Could you send us, for the record, whatever study you made of this that resulted in that conclusion of around 55 percent or thereabouts for the last year? We would like to have that for the record.

Mr. Taft. Yes, sir.

[The information referred to follows:]

DCAA Audit Workload

In setting up ATSD(R&O), the management information system at DCAA was used to determine the approximate percentage of staff-years of effort devoted to preaward and post-award work. The figures for fiscal year 1980 were as follows:

	Audit staff-years	Percent
Postaward	1,492.2	54.7
Preaward	1,235.4	45.3
Total	2,727.6	100.0

Senator Eagleton. So then do I conclude roughly 55 percent of the time—I won't hold you to the precise figure—50 some odd percent of their time is spent on post-award matters?

Mr. Taft. Post-award audits.

Senator Eagleton. Twenty percent of that 50 percent is going to agencies other than the Department of Defense?

Mr. SHERICK. Yes, sir, they have been staffed for that mission.

Senator EAGLETON. The structure of DCAA: Are professionals assigned to operate exclusively on the acquisition process, advise contracting officers, and advise them on how to negotiate? That is what a sizable number of professional do, 45 percent? Then there is another group of professionals, 55 some odd percent, that do post-audit award?

Mr. SHERICK. No, not necessarily. What happens, for instance, is they have resident auditors at major contractor locations. And there are branch offices that audit the smaller contractors in their assigned geographical area and support the negotiators. Normally, what happens is that as contract proposals or offers come in, the contracting officer would request the auditor cognizant of the proposing corporation to review it. These auditors are experienced in that corporation because they are responsible for pricing data, overhead rates and the kinds of things that they are working on as part of audits, on currently on-going contracts at that corporation. So these people work on both sides. Their expertise is generally across the board in the evaluation of proposals and the post-award audit of the contract that eventually comes out of that proposal. It depends again on the bidders, what they have in terms of knowledge about them, and what their expertise is in that connection.

Senator EAGLETON. Mr. Sherick, are you familiar with the report of the General Accounting Office, dated May 10, 1979, entitled "The Effectiveness of the Defense Contract Audit Agency Can Be Improved"?

Mr. SHERICK. Yes, sir.

Senator EAGLETON. I would like to elicit you comment on certain observations that GAO made in that report:

> DCAA auditors are viewed both by procurement management and themselves as part of the procurement management team, even though organizationally they are a separate agency reporting to the Assistant Secretary of Defense Comptroller or as described in a House committee report in 1968, the concept which guides the DCAA makes defense contract auditing integral to the procurement process. DCAA auditors are part of the procurement team. They sit, when needed, at the elbow of the contracting officer advising, recommending, supplying relevant data extracted from contractor's books and records. A large part of the auditing work was done before or during contract negotiations.

Is that a fairly apt summary of how it functions today?

Mr. SHERICK. Yes.

Senator EAGLETON. Would this then be a fair counclusion?

> In short, the large part of DCAA's responsibility is pre-award work. They are not necessarily looking at whether fraud or waste has been committed after a contract has been entered into. They are advisers and not necessarily skeptical critics of the contracting officers, and the contracting process.

Mr. SHERICK. I think they are critics in the sense that they disallow and question costs on contracts. That is their job. They do not review the contracting process; that is a function of the internal audit agencies. The provisions of the contract are pretty specific, what the contractor will provide, what he will get paid for, and what the ground rules are.

Also, his cost accounting system, the whole process of costing, et cetera, is usually established within cost accounting principles and standards. The auditor is concerned about that, but, again, he is premarily concerned with contract costs. If we buy 100 widgets for

$1 apiece and the contractor provides 100 widgets which meet the inspection provision, and its costs are accumulated under the contract through an acceptable accounting system reviewed by the auditor, it would then be approved for payment.

At the conclusion of the contract, a final audit would be performed and final payment approved. The contracting officer, if you will, is responsible for administration of the contract—to see that the contract is properly performed and that the auditor has verified the costs.

Senator **Eagleton**. In 1970, Deputy Secretary of Defense Packard issued a memorandum which apparently established the current operational techniques of DCAA, is the correct?

Mr. **Sherick**. Yes.

Senator **Eagleton**. In that memorandum, Secretary Packard wrote, "We should avoid actions by auditors in their advisory capacity which appear to dispute or question specific decisions of contracting officers."

I find that very curious, an instruction that "we should avoid actions by auditors in their advisory capacity that appear to dispute or question specific decisions of contracting officers." Why was that instruction given?

Mr. **Sherick**. I cannot speak for Secretary Packard, but the concept behind that was that the auditor, as a part of the negotiating team, provides to the negotiator—who is the individual signing the contract—cost and other data for his use in contract negotiation. The negotiator has to decide as he negotiates what is in the best interest of the U.S. Government. On one contract, the auditor may say, "The overhead rates in this contract are not quite what I think they ought to be." But from a negotiation point of view, the negotiator may get other items in that contract or in that proposal that are very attractive to him and very much in the interest of the Department of Defense and the taxpayer.

When he makes his final decision, he, the contracting officer, is responsible for getting the best deal that the United States can get on a contract. In some instances he may have to disregard some of the advice that he got from an auditor because he is getting other benefits from that contractor and in that proposal that overall, is a better deal for the U.S. Government. I think that is what Secretary Packard was trying to say, that advice is offered up as staff advice in that capacity for the negotiator to use in determining what is the best deal of all the bidders for the U.S. Government. And that is his job.

Senator **Eagleton**. GAO notes at page 15 of the aforementioned 1979 report that the Packard memorandum, the one to which I made reference, relaxed the reporting procedures by which contract auditors go up a chain in the Department.

In the year prior to the Packard memorandum, there were at least 31 serious descrepancies, cases in which the contract auditors disapproved or questioned but the items were reinstated by the contracting officer. Thirty-one instances of situations like this were referred to top-level managers in DOD.

The year after the Packard memorandum became operative, only a handful had been referred up each year, three a year. What is your comment on that?

Mr. **Sherick**. It is possible that 31 were negotiating problems. Maybe they screened them out. However, since the Defense Contract Audit Agency reports to the Comptroller of the Department of Defense, when an auditor feels his advice was not taken, I don't know that there is any inhibition against moving it up through the chain in the Department. I cannot explain the history of why that happened. I see no inhibition to an auditor.

Mr. **Taft**. Senator, I believe also there is a requirement for any contracting officer when he receives advice from the DCAA and chooses not to follow it, he must put in the record of his negotiating a memorandum describing the advice received and the reasons why he did not follow it.

Senator **Eagleton**. GAO notes at page 12 that that isn't done.

At page 12 it says, "When the contract auditors provide certain information to contracting officers, there is frequently no feedback." GAO notes, "Despite the importance of feedback information with DCAA to top level management and procurement managements, the failure to provide information is an old problem and it still persists."

It goes on to comment about earlier findings with respect to that.

Mr. **Sherick**. That is an internal operating problem at the Department of Defense. That is one of the things I will look into to find out why price negotiating memoranda are not being written and why are they not addressing the auditors' problems or recommendations. He owes it to the auditor to say why he did not take that advice.

Senator **Eagleton**. I hope you will use your influence, Mr. Sherick, to see that is rectified. That has been a continuing problem, I gather, from a series of GAO reports. GAO notes that in 1975, the Department of Defense established a task force which recommended procedures be initiated requiring DCAA to report instances where significant amounts that were questioned or considered unallowable by auditors were reinstated or allowed by contracting officers. The procedures were intended to enhance audit effectiveness and help insure that the Office of Secretary was knowledgeable of significant costs questioned by the auditors but allowed by the contracting officer. However, that task force recommendation was not implemented.

According to GAO:

> The principal reason the task force recommendation was not accepted was the belief by major DOD staff elements that auditors and contracting officers would be placed in an adversary position. The overriding consensus in DOD appears to be contract auditors should not be delegated any responsibility for internal audit of the team effort and should not be place in the position of reviewing and reporting on the client.

And the client is the contracting officer. Would you comment on that?

Mr. **Sherick**. I don't agree with that. If there is an issue between the auditor and contracting officer, I think we have every right to look into it post-award and find out why he ignored the advice of the auditor.

Senator **Eagleton**. It appears from the GAO observations——

Mr. **Sherick**. It would be an internal audit responsibility to look at that.

Senator EAGLETON. At least the GAO finds that the DCAA, since its primary role, as Mr. Taft and you have pointed out, is the acquisition process and the formulation of policies in acquisition, DCAA views its client as being the contracting officer. Because it has that close relationship in the development of the contract and in the negotiations of the contract, it is not as vigilant as it should be on auditing or examining the contract post-award. That is the thrust as I read it in the GAO report.

Mr. SHERICK. I have oversight and evaluation over DCAA and I will look into that matter.

Senator EAGLETON. What about page 16 of the GAO report where it notes that DOD and DCAA consider procurement oversight to properly be the province of DOD internal audit organizations, not DCAA. One obvious problem with this is that the internal audit organization, particularly DAS, which would be the heart of the new IG, doesn't have the manpower to do the job. But there is another problem beyond manpower. DOD's instruction with respect to DAS:

> The contract auditor may provide assistance to the internal auditor where providing assistance does not conflict with his basic role of providing advisory service to the contracting officer. Requiring contract officers to evaluate contracting officers' performance would not be appropriate where assistance requiring evaluating contracting performance may be important.

That is a cumbersome phrase. It says, "Where providing assistance does not conflict with its basic role of providing advisory services to the contracting officer." What is your observation on that?

Mr. SHERICK. I think his evaluation of the negotiator as a negotiator would not necessarily interfere with his ability to advise that negotiator on contract proposals. I think his evaluation as part of an internal audit would most certainly be appropriate for the internal auditor to get.

If we were running an audit of the procurement function in a selected area, it would seem to me to be appropriate to talk to the DCAA auditors concerning factual matters relating to the audit.

Senator EAGLETON. Do the DCAA auditors share totally any and all information they have gathered about a particular contract with DAS?

Mr. SHERICK. I think there may be privileged contractor data. DCAA is looking at the contractor's proposal, and looking at important information that is competitive in nature and shouldn't be revealed. Beyond that I think all the proposals are open to audit. The DAS is not a contract audit agency. It doesn't audit contracts. It audits the functions within the Department of Defense which would be the procurement function.

Senator EAGLETON. Does DCAA then fully share its data and information on any particular contract—if not with DAS—with any other internal audit groups within DOD?

Mr. SHERICK. I don't know the answer to that. I don't know precisely what they provide.

Mr. TAFT. I think the answer would be there is some information companies make available to them as part of the audit that they are not permitted to share.

Senator EAGLETON. GAO points out on page 17 that DCAA officials do not refer specific problem areas to DOD internal audit groups because to do so would be a violation of their charter. This is what GAO finds and that there is inadequate sharing of information by DCAA with other internal audit groups within DOD. Why should there be any hesitancy, reluctance or any internal charter that would prohibit the sharing of information by various audit entities within DOD, one with the other?

Mr. **Sherick**. I don't know of any unless it is proprietary data they had.

Mr. **Taft**. I think the restriction would be related to any restriction that the person providing the information had imposed on it. I think DCAA would have to respect the confidentiality under which certain information might have been provided to them. That would be the only restriction I would see.

Senator **Eagleton**. I will repeat the last sentence, quoting from the GAO Report:

> We believe the agency should not have entered into agreements restricting the government's and its own access to contractor books and records. Such agreements are not consistent with good auditing procedure and with the role of the agency as the accounting and financial adviser to the Department of Defense on procurement matters. When agreements restricting those rights to information have been entered into, the government does not have the information that is available to the contractor and, therefore, is at a disadvantage in monitoring the contractor's cost.

Would you comment on that?

Mr. **Sherick**. I am sure on the agreements. They reach agreements with whom?

Senator **Eagleton**. With the contractor.

Mr. **Sherick**. With the contractor for certain data?

Senator **Eagleton**. According to GAO, when the contract is entered into between the Department of Defense and a given defense contract, there are certain restrictions imposed in that contract.

Mr. **Sherick**. That is part of negotiation.

Senator **Eagleton**. It limits access by the Government to books and records of the contractor when that access would help verify the accuracy of cost, et cetera, and the GAO finds this to be an impediment to good auditing and control procedures.

Mr. **Sherick**. On its face I would agree.

Mr. **Taft**. Senator, let me say, I think GAO may be correct in that the agreements entered into provide for more information being made available on a limited or restricted basis than perhaps they could receive if they negotiated more toughly. That is a fair point. I think it is a situation where they do get more information, they just cannot make it available to as many people.

It might be that they would get less information in total even for themselves if they didn't agree to keep it restricted amongst themselves.

There is a tradeoff there. The additional information we get from the contractor is to some extent the function of the limited distribution.

Senator **Eagleton**. We are going back a step earlier, Mr. Taft. DCAA or no one is getting this information simply because it is limited by the contract.

Mr. **Taft**. I understood——

Senator **Eagleton**. GAO is talking about the sharing of information. I am inquiring into whether DCAA or other entity is getting access to the books and data it ought to have in monitoring costs and efficiency on a given defense contract.

Mr. TAFT. As far as DCAA getting information, we have no disagreement.

Senator EAGLETON. Would you agree that restrictions on access to information are inimical to the public's interest?

Mr. TAFT. I don't have any question as to that.

Senator EAGLETON. GAO goes on to point out as follows:

> The DCAA has limited its own access to some important information. Contrary to both DOD policy and regulations and public law, contract auditors are not always provided with the information necessary to review contractor pricing proposal or contractor cost. Contract auditors may have compounded the problem by entering into agreements which have limited their own access to contractor data.

So says the GAO.

Mr. TAFT. That should not be done.

Senator EAGLETON. What I am driving at by this line of questioning is this: If we set up an IG in the Department of Defense that is so limited in its scope and authority by the way it is set up, will we have done something that is very meaningful in terms of the auditing and the investigating function and oversight of defense contracts? We have 18,000 people involved in this wide array of activities, 14,000 of them are professionals. Yet out of that vast number, you are proposing to set up a very small unit, made up of DAS and the Defense Criminal Investigative Service. We would not be giving as much authority to this new Inspector General as I think he is going to need in order to effectively perform his function. Especially, I think, that is a problem based on the 1979 GAO report given how postaward audit matters currently handled by the DCAA.

Do you share any worry similar to that, Mr. Sherick?

Mr. SHERICK. I personally think I have, as the Secretary's man, what I need to do the job. He is the boss of everybody in the Pentagon. All of those 18,000 people may not work for me, but they certainly work for him. My job is to serve as adviser to him. Also, my job as evaluator of auditors and criminal investigators in the Department certainly gives me what I think I need to have the agencies that work for him actually be responsive to him. That is my major assignment—to make sure the people who are charged with this responsibility in the Department are responsive to the Secretary and his desires for good management.

I personally have no problem concluding I have the authority, responsibility, and assets that I need to do the job. If I feel that there should be more people, the Secretary of Defense can certainly levy on any of the services and their audit functions to provide people that are needed. Those people are professionals. They work for the U.S. Government, and the Secretary of Defense, period. I have worked many times with groups that are made up of, as we indicate here, augmentees. That is no problem. There are professional standards. I think I have what it takes to do the job. If I didn't feel that way, I wouldn't have accepted the position.

Senator EAGLETON. By the way, I infer that if we do set up the new Office of Inspector General, that would become your assignment?

Mr. **Sherick**. I hope so. Yes; one of the items I discussed with Mr. Weinberger was that I would at least be the Secretary's nominee for the position. He agreed, and that is as far as he can go.

Mr. **Taft**. The Senate would have to confirm him.

Senator **Eagleton**. I understand.

Let me summarize some of my bottomline concerns, so to speak.

Based primarily on the GAO report, the most recent of which we have mentioned, I am worried that an Office which transfers none of the personnel from DCAA, as the administration proposal, that an office that leaves DCA in its present posture is destined to be a weak office without adequate resources and without a substantial mandate in the very important area of defense contract and procurement oversight. That has been the principal thrust of my questioning and that is my principal worry.

Second, I would observe I don't think DCAA should be regarded as sacrosanct. Any fair evaluation of DCAA indicates, based on the GAO reports, some serious failures and shortcomings.

Third, contract officers need auditors at their side when negotiating. DCAA lends a very valuable service in that advisory role, its principal role. We still need, once you get beyond the advisory role, a tough auditing capacity, to find out why billions of dollars of overruns result.

Four, looking at this huge labyrinth of investigating and auditing capacity in the Department of Defense for it would appear that the balance between contract auditing and internal auditing in the Defense Department is severely skewed toward contract audit. However, most of that auditing is not auditing at all; it is financial negotiating advice that is given to the negotiating team.

So what I am suggesting as a possibility is that perhaps DCAA ought to be split, that its primary function will continue to be the advisory one in the acquisition process, but that once the contract has been entered into and is now in the process of being implemented, that that monitoring function in terms of post-award audit ought to be under the new Inspector General. In this way, we wouldn't have problems within one agency of there being an adversarial role within that one department that GAO referred to. Does any of that make any sense to you, Mr. Sherick?

Mr. **Sherick**. In 1965, I was involved when the Defense Contract Audit Agency was established. Prior to that time the auditors were in the military services. Frequently, three different audit groups were working at the same plant. And the DCAA concept was that first, there would be a more efficient process by putting them in a central agency because all of the services did business with that contractor and only one audit group was needed; and second, of course, is they would become independent because they would be under the Defense Comptroller instead of the military departments.

I think the system worked. I haven't had that much to do with DCAA since then, but they have a reputation for being very professional people.

There is no question GAO found some faults with them. In my job, I will be, if you will, the auditor of the auditors in terms of how they operate DCAA. I do have performance evaluation responsibility. If I feel as part of that evaluation, that there are changes in our contract audit function, including the establishment of a separate post award audit agency that should be made, I certainly will recommend them to the Secretary.

Mr. TAFT. Also, Senator, if I could add, in setting up Mr. Sherick's office, we did consider this question carefully. The thought was that possibly later on, if we would find that the resources we had allocated to the Assistant to the Secretary of Defense for Review and Oversight were not what he required, we would give additional resources, and the DCAA would be a logical place for those resources to come from.

At the outset, in setting up, however, it seemed to us there was a risk in splitting DCAA up, and that it would be best to start the office off with the 500 people, and we could augment the ones that were transferred to the new office with some additional slots. We decided to start that way, see how that worked, and not initially run the risks involved in breaking up DCAA.

If it didn't work, we would look at it again. We didn't want to start off incurring a risk we didn't think we needed at the outset. I think Congress could legislate on the same basis.

Senator EAGLETON. I hope you will focus on the GAO report, Mr. Sherick. I am sure you have. I hope you will focus on it in light of the exchange we have had here today and see how the critique of the GAO should apply to the creation of the new Office of Inspector General, specifically focusing on post-award audits, how that could be more intelligently structured.

Mr. SHERICK. That was one of the considerations they had when they set up the agency.

Senator EAGLETON. There is a 4-minute vote warning and I must go to another appointment. There will be a recess for a few minutes.

Chairman Roth will be back in a few moments.

Thank you, Mr. Sherick and Mr. Taft.

[Brief recess.]

[The prepared statements of Mr. Taft and Mr. Sherick, with responses to written questions submitted by Senator Roth follow:]

PREPARED STATEMENT OF WILLIAM H. TAFT IV

Mr. Chairman and members of the committee—I appreciate this opportunity to appear before you today and present the Department of Defense's views concerning the question of the legislative establishment of an Inspector General within the Department of Defense. I am accompanied today by Mr. Joseph H. Sherick, newly appointed by Secretary Weinberger to be Assistant to the Secretary of Defense for Review and Oversight (ATSD/R&O).

I think it is important, at the outset of my statement, to stress that the Department of Defense strongly supports the efforts implicit in the proposal to create the Inspectors General in the Defense, Treasury and Justice Departments to eliminate fraud, waste and abuse in Government programs. I mention this because on occasion the Department's concerns about the provisions of specific legislative proposals have been misinterpreted as total opposition to the Inspector General concept. Thus, we welcome this opportunity to testify this morning and explain fully the Department's views on these issues.

As you are well aware, this administration strongly believes that this Nation's defense capabilities need to be strengthened immediately. However, it would be irresponsible to authorize increased defense expenditures without at the same time doing everything possible to insure that Defense funds are spent in the most efficient manner possible, and that those funds are not wasted or fraudulently diverted. Secretary Weinberger, as you know, is not a person to allow money to be spent or programs to be developed without insisting upon the most careful control and review. His reputation for getting deeply into budget matters and for being concerned with the need to eliminate fraud and waste in government programs is well-deserved. I have observed him in the past on numerous occasions give these matters his highest priority; and, indeed, on becoming Secretary of Defense in January, one of the first matters to which he turned his attention was how best to manage the Department as a whole in the most efficient manner. He concluded that there was a need for a high-level person to work directly for him on matters relating to fraud, waste and abuse, and he appointed Mr. Sherick to fill that role. He used the title, Assistant to the Secretary of Defense for Review and Oversight to avoid confusion with the other Inspectors General already in the Department. We prefer that title because it is consistent with the organizational arrangement of the Office of the Secretary of Defense, and because it reflects Mr. Sherick's direct access to Secretary Weinberger.

In order to explain fully Inspector General issues as they relate to this Department, I believe it will be helpful to the committee to sketch briefly the background of Inspector General legislation. The question of the establishment of an Office of Inspector General in DOD has been the subject of serious discussion for almost three years. When the Inspector General Act of 1978 was in the process of being enacted, the Congress considered applying it to DOD; but, recognizing the unique mission and structure of the Department, and the substantial resources already dedicated by the Department to the audit and investigation functions, the 1978 legislation, instead of creating an Inspector General in the Department, as was done in 12 other agencies, directed that an independent task force evaluate the audit, inspection and investigative components of the Department of Defense. The act also required the Department to submit semiannual reports to Congress during the period ending October 1, 1982, summarizing activities of the audit, investigative and inspection units of the Department of Defense.

After a year's study, the task force concluded its analysis and submitted its report to the Congress in May 1980. The task force recommended *against* applying the Inspector General Act of 1978 to this Department. Instead, the task force found that the needs of DOD could best be served by a high-level review and oversight office in the Office of the Secretary to oversee DOD's efforts to combat fraud, waste and abuse; it suggested that the head of this office be part of the Secretary's management team. Secretary Weinberger has carefully considered that task force recommendation.

While the task force had recommended creation of an Undersecretary, the reporting relationship to the Secretary, rather than the level of compensation of the individual, was certainly the most critical element of the recommendation. Secretary Weinberger felt that creation of an Assistant to the Secretary for Review and Oversight would meet his management needs and also would conform to the spirit of the recommendations of the task force. He administratively established this position on April 20, 1981, because he wanted to address comprehensively and effectively the problem of fraud, waste and abuse immediately, and no additional legislative authority was required for this action.

There is a fundamental difference between the position which Secretary Weinberger has administratively established, and the Inspector General that H.R. 2098 would impose upon the Defense Department.

The Secretary's proposal adds a senior official, Mr. Sherick, to his management team, fully responsive to the Secretary, with direct access to the Secretary, and able to provide much needed assistance in rooting out wasteful and inefficient programs and fraudulent actions. The national security responsibilities of DOD make it imperative that an Inspector General in DOD have a clear reporting relationship within the command structure. In contrast, the Inspector General established by H.R. 2098 would be an independent official capable of departing from the Secretary's principal areas of concern, and/or emphasizing his own priorities. The unique operational and intelligence requirements of DOD require that any such official operate under the authority, direction and control of the Secretary of Defense.

Although DOD concerns about the provisions of H.R. 2098 were brought to the attention of the House Government Operations Committee through testimony, discussions with staff, and suggestions for alternative language, none of the provisions in that bill when it was passed by the House on May 19 addressed those concerns. Significantly, however, the Department's objections were readily understood by House Members with interest and involvement in issues of military organization and mission. Representative Sam Stratton forcefully, but unsuccessfully, argued on the House floor that the Armed Services Committee should be given the opportunity to consider the impact of H.R. 2098's Inspector General upon DOD's organization and operations; and the chairman and ranking minority member of the House Armed Services Committee, along with four subcommittee chairmen and four subcommittee ranking minority members, voted against passage of H.R. 2098 because DOD concerns had not been met.

The specific reasons for the Department's objections to H.R. 2098 are as follows:

First, the traditional language used within this Department when defining the relationship between the Secretary of Defense and the different agencies, services, and offices of the Department is "authority, direction and control" (10 U.S.C. 133), language which reflects the requirement for command and control which is essential to any military organization. H.R. 2098, as it amends the Inspector General Act of 1978, would place the proposed DOD Inspector General only under the "general supervision" of the Secretary of Defense. Moreover, it is clear that the Inspectors General established by H.R. 2098 and its precursor, the Inspector General Act of 1978, are independent officials with specific statutory authority to set their own agenda and review and evaluate any and all programs and decisions of the department or agency in which they are located. A provision of the 1978 act specifically protects this independence from objection by the Secretary.

The provisions of the Inspector General Act of 1978 which are the principal cause of concern to the Department of Defense are sections 3(a), 4(a)(1), and 6(a)(2). Section 3(a) provides that: "Neither the head of the establishment involved nor the officer next in rank below such head shall prevent or prohibit the Inspector General from initiating, carrying out, or completing any audit or investigation. . . ."

Section 4(a)(1) of the act provides that the Inspector General is empowered to: "Provide policy directon for and to conduct, supervise and coordinate audits and investigations relating to the programs and operations of such establishment."

And section 6(a)(2) of the act grants to the Inspector General the authority: "[T]o make such investigations and reports relating to the administration of the programs and operations of the applicable establishment as are, in the judgment of the Inspector General, necessary or desirable."

Each of these provisions underscores the independence of the Inspector General; however, they are inconsistent with the command structure of the Department of Defense. While they may have some place in a civilian agency, they are completely inconsistent with the hierarchical commanders/subordinate relationship that is at the heart of any military organization, and embodied in the chain of command. These provisions do not encourage the individual to work with the Secretary as a part of his team. Providing that the Inspector General shall be under the "general supervision" of the Secretary, as H.R. 2098 does, is quite different from providing that he shall be under the "authority, direction and control" of the Secretary of Defense. In our view, the Secretary of Defense must have the ability to terminate any review process or investigation that the Inspector General may initiate which could jeopardize national security. A perfect example of this would be the planning of the Iranian rescue mission, or the planning stages of any other sensitive operational mission, where an Inspector General not answerable to the Secretary could initiate an untimely investigation that imperils not only national security interests but hundreds of lives as well. Similarly, an audit or investigation may inadvertantly disclose a sensitive research and development program and likewise do irreparable harm to our national security posture by depriving us of a strategic or tactical advantage.

The administration recognizes that these instances rarely occur. However, when they do arise, they are of extreme importance. Accordingly, we have proposed language to be included in the administration bill that will shortly be submitted which recognizes that in that rare case when the Secretary of Defense needs to terminate an audit or investigation in the interests of national security, he must have that authority. In addition, in order to assure the Congress that there is proper accountability for his actions, we suggest that the legislation require the Secretary to report such a veto, and the reasons therefor, to the chairmen and ranking minority members of the appropriate committees.

Another aspect of H.R. 2098 which is of concern to this Department is the proposed transfer of the Defense Contract Audit Agency (DCAA) and the Office of the Inspector General of the Defense Logistics Agency (DLA/IG) to the operational control of the proposed office of the DOD Inspector General DCAA advises DOD acquisition officials and audits contractors' financial procedures and operations for DOD, and for many civilian agency Inspectors General. Its principal mission is an advisory role in the acquisition process, not oversight of DOD operations. DCAA is simply not primarily a review and oversight organization. It is an integral part of day-to-day program management.

The Defense Logistics Agency acts as a single manager for DOD for a variety of logistics services: Procurement, supply and management of material, and contract administration. The DLA Inspector General provides the director, DLA with inspections, inquiries and surveys concerning the efficiency, effectiveness, economy, morale and discipline within that agency. The DLA/IG does not have resources which are primarily dedicated to auditing or investigating for fraud and abuse. Since these personnel are needed for the efficient operation of existing programs, we do not believe that these offices should be transferred to the new Inspector General.

It appears to me that the primary difference between the forthcoming administration proposal and some of the provisions of H.R. 2098 is the question of independence. I know that the Congress has been greatly concerned that the independence and, thus, effectiveness of auditors and investigators could be severely hampered by having to report to third or fourth level managers who manage the programs being audited or investigated. We believe that the establishment of an Assistant to the Secretary of Defense for Review and Oversight has effectively solved that problem, because that individual reports directly to the Secretary.

The Assistant to the Secretary of Defense will be subject solely to the direction and control of the Secretary. Review of contracts for research and development of sensitive military and intelligence matters would be subject to a rigorous demonstration of a genuine need for an investigation; but, when determined to be appropriate, such investigations would be carried out under carefully prescribed procedures established by the Secretary. Finally, when the Secretary believes that it is essential to give priority to a specific investigation, he would have the authority to assure that such an investigation is promptly and thoroughly carried out.

Extension of the Inspector General Act of 1978 to the Department of Defense in the form proposed in H.R. 2098, without substantial modifications, and without any recognition of the unique aspects of the Department's mission, functions and organizational structure could, contrary to the decades-long expression of the intent of Congress, undermine the limitations that Congress has imposed to preserve separate identities for each military department. Section 2(c)(1) of H.R. 2098 specifically includes the Departments of the Army, Navy and the Air Force in the extension of the Inspector General Act of 1978 to the Department of Defense. Under this arrangement an individual without direct responsibility to either the Secretary of Defense or the Service Secretaries would exist with unlimited power to exert influence over the management decisions of the millitary departments. This is contrary to all Congressional enactments with respect to the Department of Defense to date. The Secretary does not believe it to be good management to undercut members of his team in this fashion.

Another aspect of the 1978 Inspector General Act that raises a potential problem for this Department involves the impact such an IG would have on DOD law enforcement activities. Representatives from the Department of Justice have registered serious concerns about the confusion and disruption which a totally independent IG could create in processing criminal cases, particularly with regard to the influence such an official could exert over authorized discretionary determinations with respect to law enforcement, litigation, legal advice, and corrections. This Department also is concerned that an Inspector General like those established by the 1978 Act could disrupt the military command's lawful exercise of criminal investigations and law enforcement responsibilities under the Uniform Code of Military Justice.

Under the present situation at DOD with the establishment of the Assistant to the Secretary of Defense, the Secretary would continue to be the single individual responsible to Congress for the efficient management of the Department of Defense. Just as he is the single individual to whom the President as Commander-in-Chief now looks to direct and control the activities of the Armed Forces, Secretary Weinberger would continue to be the individual solely responsible for, and answerable to the Congress concerning, all matters related to strategic, military and intelligence operations of this Department. In this regard, the Secretary's creation of the assistant to the Secretary of Defense position reflects his commitment to combatting fraud and waste—a commitment he has demonstrated througout his career in public service—through an official who reports directly to him, through an individual who does not undermine his military operational, intelligence and military justice responsibilities but who supports and assists his management efforts.

Mr. Chairman, we firmly believe that the establishment of the position of the Assistant to the Secretary of Defense for Review and Oversight by Secretary Weinberger goes a long way towards resolving the concerns about proper oversight of this Department's effort's to discover and deal with problems of fraud, waste and abuse—concerns which we share with this committee and this Congress. The Assistant to the Secretary of Defense for Review and Oversight permits effective and focused efforts to direct this Department's resources towards eliminating such problems, wherever discovered. At the same time, we recognize that it is the intention of H.R. 2098 to address precisely those concerns that have stimulated the Secretary's interest in creating an Assistant to the Secretary of Defense for Review and Oversight. The difference between the Department's approach and that of H.R. 2098 is that ours takes into account the peculiar nature of DOD's function and management structure, while the House bill would treat the Department as if it were administering a variety of domestic grant programs instead of carrying out military operations and activites. If H.R. 2098 were modified to take full account of the unique character of DOD's mission, we would have no objection to the statutory establishment of an office similar to the proposed Assistant to the Secretary of Defense for Review and Oversight. Indeed, we can see an advantage in legislation because a subsequent administration would not then have authority to disestablish the position. In view of the unacceptably broad language of the present provisions of H.R. 2098 which I have addressed, we must oppose the bill as currently drafted.

I appreciate the opportunity to appear before you to present the views of the Department of Defense and thank you for your careful consideration of our concerns.

Prepared Statement of Joseph H. Sherick

Mr. Chairman and Members of the Committee, I appreciate the opportunity to testify before the Committee today and discuss with you the duties and functions of my office, and the Department's plans for strengthening its anti-fraud program and promoting efficiency and economy in Defense programs and organizations and at installations.

I think it should be said at the outset that Secretary Weinberger and Deputy Secretary Carlucci are fully committed to a strong and aggressive program, for reducing, and whenever possible, eliminating fraud, waste, and mismanagement in the Department of Defense. I share and fully support their commitment and intend to utilize all of the resources available to me to insure that the program touches and involves all Departmental activities and is an item of personal concern to each military service member, civilian employee, contractor, and contractor employee, participating in Defense programs.

I would like now to describe the authority and responsibilities assigned to me by my charter, DoD Directive 5148.10.

First, I have been designated to serve as the principal advisor and assistant to the Secretary of Defense for matters relating to the combating of fraud, waste and abuse in DoD programs and operations. As such, I will be active across the board in the Department in initiating, directing, and coordinating programs aimed at detecting and eliminating fraud and mismanagement. I have been assured by the Secretary that I will have direct access to him on these matters.

In addition to this general responsibiity I have been assigned specific authority in the areas of audit and criminal investigation. These include:

(1) Developing policy, monitoring and evaluating program performance and providing guidance to all DoD activities on matters regarding criminal investigation programs.

(2) Conducting criminal investigations, as required, in the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff and the Defense Agencies, including the Defense Logistics Agency.

(3) Monitoring and evaluating the adherence of DoD auditors to internal audit, contract audit and internal review principles, policies and procedures. This oversight and evaluation will include the activities of the central internal audit agency of each Military Department, the Defense Audit Service and the Defense Contract Audit Agency which is charged with the responsibility for contract audits DoD-wide. In addition, I will review the activities of installations and command level internal auditors who conduct reviews of programs and operations for local Commanders. My responsibilities in this area include identification of any areas where these agencies are not in compliance with DoD policies and programs, and recommending specific corrective action to the Component head, or, if necessary the Secretary of Defense.

(4) Developing policy, evaluating program performance and monitoring follow-up actions taken by all DoD components in response to General Accounting Office audits, internal audits and internal review reports. I view this as a critical part of my responsibilities, where I will be required to make a judgment on whether specific audit or review recommendations could, if implemented, improve efficiency or effectiveness of DoD programs and operations. In those cases where significant savings or efficiencies appear possible and the management change beneficial, but management has been unwilling to comply, I am charged with elevating the issue to the Secretary of Defense. I will recommend corrective action, and if it is approved by the Secretary, I will monitor its implementation against a time phased plan.

(5) Advising the Secretary of Defense of any incidents of fraud, waste or mismanagement in DoD programs and operations which require the Secretary's personal attention. In this area I will also be seeking out chronic and highly significant problem areas which are especially vulnerable to fraud, waste and mismanagement, and seeing to it that appropriate protective actions are taken.

(6) Exercising direction, authority and control over the Defense Audit Service (DAS). DAS performs internal audits of the Office of the Secretary of Defense, JCS, DoD-wide Unified and Specified Commands, multi-service activities, security assistance programs and special audits as directed by the Secretary or Deputy Secretary of Defense.

(7) Operating the DoD-Hotline, for use as an information source in detecting fraud, waste or mismanagement in DoD programs.

Now that I have described my basic responsibilities, I would like to discuss my present plans for the organization of my office. I expect to have a Deputy, who will assist in managing all aspects of the office, and act in my absence. In addition, there will be four Associate Directors with the following responsibilities.

(1) Associate Director (Audit) and Director, Defense Audit Service—will supervise the operation of the Defense Audit Service, which has approximately 400 audit and audit support personnel engaged in the internal audit of the Office of the Secretary of Defense, the Organization of the Joint Chiefs of Staff, the Defense Agencies, multi-service activities and special audits as directed by the Secretary of Deputy Secretary of Defense.

(2) Associate Director (Criminal Investigation)—will supervise the operation of the Defense Criminal Investigative Service (DCIS). The staff of DCIS will include approximately 100 criminal investigators plus support personnel and will be located throughout the U.S. and at certain overseas locations. DCIS will be responsible for providing criminal investigative support to the Office of the Secretary of defense, the organization of the Joint Chiefs of Staff and the Defense Agencies. One of the most important agencies to be supported is the Defense Logistics Agency, which manages common supply items that are particularly vulnerable to theft or criminal activity.

(3) Associate Director (Oversight, Evaluation and Criminal Policy)—will direct a staff of about 10 individuals who will monitor and evalutate the adherence of DoD components to contract audit and internal audit and review principles, policies and procedures. He will also direct comprehensive evaluations and oversight of audits, internal reviews and criminal investigations throughout DoD. Finally this Associate Director will develop policies and procedures relating to criminal investigations and monitor and evaluate criminal investigations for all units throughout the DoD.

(4) Associate Director (Audit Follow-Up, Reports and Management)—will direct a stafff of about 10 individuals who will manage follow-up of recommendations made in DAS and GAO reports, review audit and internal reviews conducted throughout DoD and arbitrate disputes between auditors and management that deal with savings or efficiencies in DoD operations. We fully expect there will be cases where management disagrees with audit recommendations and therefore hesitates to implement them. This Associate Director will be responsible for weighting audit findings and recommendations against management considerations, and making recommendations concerning resolution. This will be a particularly difficult task since adoption of certain audit recommendations may not always be in the best interest of Defense operations, or improve efficiency and economy. This Director will also be responsible for assuring that agreed audit recommendations are implemented. Recomendations on matters in disagreement will be brought to the attention of the appropriate Service Secretary or to the Secretary of Defense if necessary for prompt and final resolution.

All five of the individuals just described will be members of the Senior Executive Service and will have considerable experience in program analysis, auditing, and investigating, as well as a clear recognition of the operational responsibilities of the Military Departments. They will need to remain in close contact with the DoD audit, inspection, investigation and internal review establishment that includes some 14,000 military and civilian personnel.

In concluding my statement, I want to highlight a few other areas where I think my office will be active and which will have a very significant impact on Defense operations;

(1) Working closely with the President's Council on Integrity and Efficiency to achieve coordinated, government-wide attacks on fraud and abuse involving more than one federal agency.

(2) Cooperating closely with Inspectors General in other civil federal agencies to insure that there is both an exchange of ideas on methods and techniques, as well

as a careful coordination of any investigation or audit which involves DoD and these other agencies.

(3) Coordinating efforts of the Departments' auditors, Inspectors General and Criminal Investigative agencies to achieve a uniform and balanced approach to rooting out or preventing fraud, waste and abuse.

(4) Developing new ideas and approaches in improving DoD operations and reducing fraud, waste or mismanagement.

(5) Placing emphasis on use of Hotlines and mail drops to report and expose instances of fraud or abuse.

I have outlined my responsibilities, organizational structure and important areas of attention. I believe that my present charter provides me with the authority necessary to fulfill my functions and responsibilities. I have reviewed H.R. 2098 and believe that I could successfully operate under the bill, provided it is modified to meet the Department of Defense concerns expressed by Mr. Taft in his testimony. With that understanding I support the establishment of a statutory Inspector General.

As a career civil servant with over 30 years service in DoD at all levels, I feel I am fully equipped to understand the management problems of this Department in all areas. I believe I am well able to address the issues of fraud, waste and mismanagement. I am presently on the job, my office is functioning, projects are underway, and as a member of the Secretary's senior management staff, I meet with him daily to discuss matters of fraud, waste and management.

Mr. Chairman, that concludes my prepared statement. I would be pleased to respond to the Committee's questions.

RESPONSES TO WRITTEN QUESTIONS SUBMITTED BY SENATOR ROTH

ITEM 1

The Defense Task Force recommended that in lieu of an Inspector General, Defense set up an Under Secretary for Review and Oversight. Defense decided to create an Assistant to the Secretary of Defense (Review and Oversight). The relationship between this Assistant and other defense organizations is not totally clear.

The Defense Task Force also recommended that the military Department Assistant Secretaries for Financial Management should be relieved of their responsibilities over the internal audit organizations and noted organizational placement problems imparing the auditors independence which defense agreed to correct.

Question 1. Who will make policies for internal review in Defense?

Answer. The 1981 General Accounting Office standards are followed by all DoD audit organizations. Overall guidance on auditing within the Department of Defense is the responsibility of the Assistant Secretary of Defense (Comptroller). This would include the "internal review" function as it is employed in the Department. Internal reviewers (as opposed to the formal internal audit agencies) work under the direction of military commanders at varying levels and are thus subject to specific guidance furnished by those offices. The Assistant to the Secretary of Defense (Review and Oversight) will have an oversight role which includes evaluation of the compliance by internal reviewers with prescribed policies and GAO standards.

Question 2. Who will make policies and oversee the Army, Navy, Air Force and Marine Corps Inspector General Systems? How many interservice inspections take place?

Answer. In the Army, the Inspector General functions under the policy guidance and oversight of the Secretary of the Army and the Chief of Staff of the Army. As such, the Inspector General is directly and solely responsive to the Secretary and Chief of Staff.

In the Department of the Navy, policy and oversight of the Inspector General systems are the responsibility of the Secretary of the Navy in coordination with the Senior Military Officer of the Service.

Within the Air Force, the Secretary of the Air Force, through the Chief of Staff and the Inspector General, USAF, make policy and oversee the Air Force Inspector General system.

In the past two years, the following interservice inspections have taken place jointly by the Army and Air Force. Army and Air Force Exchange System; US Soldier's and Airmen's Home; and the Military Enlistment Processing Command. Within the Department of the Navy, ten interservice inspections take place, on a triennial basis, under the auspices of the Commander-in-Chief, Atlantic Fleet Inspector General, who doubles as the Commander-in-Chief, Atlantic Inspector General.

Question 3. What is the necessity for having internal audit organizations getting policy guidance from an Assistant Secretary for Financial Management? Do the Assistant Secretaries manage operations which the auditors must audit?

Answer. The internal audit agencies of the Military Departments report to the Secretaries of their respective departments. Departmental implementation of broad policy guidance from the Department of Defense, as well as specific guidance on matters peculiar to a particular Military Department, is provided by the Assistant Secretaries having financial management responsibilities. These individuals perform a staff role for the Departmental Secretaries and do not manage operations subject to audit.

ITEM 2

Question. Despite your comments about your objections to the "general supervision" language of the Inspectors General Act of 1978, isn't it the "reporting to Congress" provision which really disturbs you?

Answer. No. As DoD testimony before the House Government Operations Committee and this Committee, as well as discussions with the staffs of both Committees clearly reflects, this Department is primarily concerned with the independence which H.R. 2098 would grant to a statutorily established Inspector General within DoD. Whereas the Secretary of Defense could be greatly assisted by a statutorily created official as part of his management effort to combat fraud, waste and abuse, an IG empowered to audit or investigate at will, and to continue such efforts despite a Secretarial determination that national security interests may be jeopardized, would be incompatible with this Department's mission and organizational structure. Should the Congress decide to establish an Inspector General by statute within this Department, subject to the authority, direction and control of the Secretary of Defense, there would be no objection to reporting to the Congress concerning the activities of, results achieved by, and effectiveness, of that official.

ITEM 3

The following information comes from the Defense Annual Report on Audit Operations for fiscal year 1980.

On the basis of audit workload inventory records and personnel strength data, the internal audit agencies are not sufficiently staffed to conduct audits of DoD organizations, programs, activities and functions at the desired 2 to 5 year frequencies. A shortfall in audit resources has existed for many years and has resulted in extending the frequency of audit coverage of some auditable entities. During fiscal year 1980, this problem was aggravated by the Federal hiring limitation which was in effect from March through August 1980. In some instances, new and innovative techniques have provided some audit coverage of common programs and functions on a representative basis. In other words, there has been a general decrease in internal audit resources over the past ten year period.

Question. What plans exist to sufficiently staff the audit operations, particularly in view of the larger Defense budget?

Answer. In 1980, the Army Audit Agency was provided 45 additional spaces to cover the Commercial Industrial-Type Activities (CITA) audit mission. In 1981, the Agency was also provided 10 additional high grades, including two Senior Executive Service (SES) positions to provide for increased audit management, including the additional CITA workload. This year efforts are underway to obtain seven additional SES positions covering agency district manager positions and to obtain 45 additional high grades, primarily GS-13 supervisory auditors.

In the Navy, an assessment of staff requirements for audit and follow-up on audit findings is in process which will take account of manpower priorities versus the continuing pressures for austerity.

The Air Force Audit Agency has no immediate plans to increase the size of its staff due to a larger Defense budget. However, the changing needs of management have necessitated certain realignments to maximize use of auditor resources. A recent reorganization, approved by the Secretary of the Air Force in June 1981, will result in several significant internal improvements including flexibility in operations. Staff overhead and audit management positions have been decreased by 51 to permit a commensurate increase in line audit postions. Thus, field audit capability and productivity should be enhanced.

The Air Force Audit Agency is also in the process of adjusting audit coverage to give greater attention to audit subjects that impact on larger Defense budgets. For example, as a result of questions raised by the Assistant Secretary for Financial Management, the percentage of audit time to be devoted to procurement and contracting during fiscal year 1982 was recently increased. Also, audit priorities were reordered to provide increased audit emphasis in those high risk areas particularly susceptible to fraud, waste and abuse.

The Defense Guidance provides for a steady growth rate in the Defense Audit Service (DAS) program. The Guidance will permit DAS to increase its end strength from 409 at the beginning of fiscal year 1982 to 540 by the end for fiscal year 1987. The additional resources provided in the Defense Guidance will permit DAS to continue improving its service to DoD management by adding staff to: (1) support an increase in audits of areas susceptible to fraud, waste and abuse; (2) support audit follow-up responsibilities outlined in DoD Directive 5000.41; (3) reduce the interval between audit cycles for Defense Agency mission workloads; (4) respond promptly to OSD staff and Defense Agency requests for audit service; and (5) implement the GAO standards for audits of computer-based systems.

ITEM 4

Question. Can you give us another example of why the Secretary needs to be able to terminate an audit or investigation for national security reasons?

Answer. Yes. As you are aware, the military departments have their own criminal investigations units, Air Force Office of Special Investigations, Army Criminal Investigation Command and the Naval Investigative Service, which investigate violations of the Uniform Code of Military Justice and some of which conduct counterintelligence investigations. It is conceivable that one or more of these units could be investigating an apparently large-scale espionage ring involving military members and DoD civilian employees. Such an investigation could involve an extensive scheme for getting access to and transmitting highly sensitive classified documents to a hostile foreign intelligence service. While such an investigation was ongoing, in close coordination with the Justice Department, the newly appointed statutory IG (or Assistant to the Secretary (Review and Oversight)) could receive and begin to investigate an anonymous allegation of embezzlement, or of an extensive series of fraudulent travel vouchers (submitted by a number of the subjects of the counterintelligence investigation—in furtherance of their plan). When the Secretary became aware that the two investigations were ongoing at the same time—one for fraud and one for espionage—he might determine that due to the extreme sensitivity and importance of the counterintelligence investigation, that the IG's fraud investigation should be held in abeyance or terminated. If the new IG is one who had been appointed pursuant to an H.R. 2098-like statute, the IG could choose to ignore the Secretarial determination and continue with the fraud investigation. The Secretary might consider the IG's refusal to terminate the investigation an irresponsible act of such magnitude that he would recommend to the President that the IG be removed. Even if the President concurred, however, the damage would have been done if the counterintelligence investigation was compromised.

In the above scenario, had the Secretary been authorized to terminate the fraud investigation, and required to report to the Congress his reasons for doing so, the espionage investigation may not have been jeopardized. This same result could be reached were the new IG statutorily established under the authority, direction and control of the Secretary of Defense.

ITEM 5

Question. Are Defense and Justice officials working to enlarge Defense's investigative jurisdiction for on-base crimes and crimes, wherever committed, in which the Department of Defense is the primary victim? What about the waiver of the "Posse Comitatus" Act to permit the DoD/IG to conduct audits and investigations expected to be in the Administration proposal?

Answer. The Department of Justice has taken the position that the Department of Defense may investigate on-post offenses and crimes, wherever committed, in which the Department of Defense is the primary victim; thus, no enlargement of such investigative jurisdiction is necessary. Accordingly, there is also no need for a "waiver" of the Posse Comitatus Act (18 U.S.C. § 1385) in such situations. There is a valid military purpose in investigating any incident occurring on-post/base, or in which the Department of Defense is the victim of a crime. Similarly, there would be a military purpose served in any circumstance in which the proposed DoD Inspector General conducted an investigation concerning an allegation of fraud, waste or abuse. Because the Posse Comitatus Act does not apply when there is a valid military purpose to the activity, there is no need for any "waiver" in any Inspector General legislative proposal. H.R. 2098 does contain such a waiver provision, despite DoD objections, but it is not expected that the Administration proposal will contain such a "waiver" provision.

ITEM 6

Question. Do you believe the existing Inspector General structure under the Military Departments and the Defense Logistics Agency should be transferred to the new DoD/IG? If not, why not?

Answer. The existing Inspector General structure under the Military Departments and the Defense Logistics Agency should not be transferred to a new DoD/IG. This would seriously disrupt both Department and Service management of defense resources. The Inspector General structures in the military services recognize the fundamental principle that inspection is an inherent aspect of command. Inspectors General are, by design, the alter egos of their commanders. Although Inspectors General function for the most part under centralized technical guidance, IG's assigned at various echelons of command are responsible primarily to their respective commanders. The system is a product of the management philosophy of this Department that reposes responsibility and accountability in commanders and managers at successive echelons. At the lower levels of command, the inspection may be accomplished by the commander himself, and/or his functional staff. However, as the scope and complexity of command increase, along with the value of the resources at his disposal, the commander needs dedicated individuals who are knowledgeable of the command and immediately responsive to the commander's priorities to accomplish this task. Inspectors General fill this need, and each Service's inspection functions and resources extend throughout its entire organizational structure.

If these IG resources were to be transferred to a new DoD/IG, under what is likely to be a highly centralized staff organizational structure, the nature and character of the military IG system would be virtually destroyed, and this transfer would curtail the Service's ability to efficiently manage their worldwide assets by taking from lower echelon commanders a vitally important resource.

The Defense Logistics Agency functions very much like a large military organization as it acts as a single manager for DoD for a variety of logistics services: procurement, supply and management of materiel, and contract administration. The Inspector General of the Defense Logistics Agency performs the same functions as a Service Inspector General in that he acts as the alter ego, confidential assistant, and eyes and ears of the Director, Defense Logistics Agency. He serves the Director, Defense Logistics Agency, by conducting inspections, inquiries and surveys concerning the morale, readiness, efficiency, economy and discipline within that Agency. Defense Logistics Agency internal audit resources were transferred to the Defense Audit Service when that Agency was formed. Current legislative proposals would place the Defense Audit Service under the operational control of a new DoD/IG. Transferring the Defense Logistics Agency IG to the new DoD/IG would leave the Defense Logistics Agency without a self-inspection capability.

Thus, we strongly urge that neither the Service Inspectors General nor the Defense Logistics Agency Inspector General be transferred to the control of any new DoD Inspector General.

ITEM 7

Question. What would a statutory Inspector General do to your existing structure to combat fraud, waste and abuse?

Answer. This question cannot be answered without knowing what this "statutory IG" would be empowered to do, and whether there would be any statutorily defined limitations to his authorities and responsibilities. For example, the statutory IG which H.R. 2098 would impose upon this Department would be an independent official, capable of establishing his own agenda and priorities for the workload of his office, and capable of ignoring the Secretary of Defense's determinination of significant problem areas. A statutory IG could proceed with an audit or investigation, even if the Secretary determined that it would endanger the national security if conducted at that time. A "statutory IG" as envisioned by H.R. 2098 could prove extremely disruptive to this Department's structure to combat fraud, waste and abuse, and its overall mission.

On the other hand, a statutory IG established following the pattern of the newly established Assistant to the Secretary of Defense (Reveiw and Oversight) would be part of the Secretary's management team. That official would have adequate authorities and responsibilities to act as the Secretary's representative in combating fraud, waste and abuse in the most efficient way, and could thus be responsive to the Secretary's desire to root out inefficient or fraudulent practices. Such an official would be better able to monitor and evaluate DoD's present structure to combat fraud, waste and abuse, and to have direct access to the Secretary to solve any significant problems.

ITEM 8

Previous GAO reports identified limitations placed on the work of Defense internal auditors. Defense officials agreed to remove those limitations, but preliminary survey work indicates auditors still seem to steer away from some areas, particularly sensitive areas such as simulated combat performance and readiness.

Question 1. Do the auditors and investigators in the Army, Navy and Air Force or those under the Assistant to the Secretary of Defense (Review and Oversight) have any limitations placed on the scope of the work that they can perform?

Answer. No. No limitations are placed on the scope or work that DoD auditors can perform.

Question 2. Do the auditors and investigators have access to all information and records they want to carry out their responsibilities? For example, does the Defense Audit Service have access to the operational plans of the Joint Chiefs of Staff?

Answer. Auditors and investigators in Army, Navy and Air Force have access to information and records needed to perform their assigned responsibilities. The only restriction imposed relates to the need for appropriate security clearance prior to making inquiries or conducting reviews of classified documentation or records.

In general, the Defense Audit Service (DAS) has access to the Department of Defense information and records necessary to carry out its audit responsibilities. However, in certain specific areas, DAS has not had access to all information and records. For example, DAS has not had access to the operational plans of the Joint Chiefs of Staff (JCS) or Force Status and Identity Reporting System (FORSTAT) reporting data. However, DAS is working closely with the Office of the Secretary of Defense and JCS to improve the procedures so that DAS information requirements will be comprehensively addressed by the JCS.

Question 3. Who currently evaluates the accuracy of military readiness reports given to the Joint Chiefs of Staff?

Do Defense auditors evaluate their accuracy? If not, are they allowed to evaluate their accuracy if they want?

Answer. In the Army, the accuracy of readiness reports is within the purview of the Deputy Chief of Staff for Operations and Plans and the Deputy Chief of Staff for Logistics functional responsibilities. The Army Audit Agency does, however, review such readiness reports when an audit(s) is scheduled to specifically address these reports or in the course of its extensive coverage given to Army readiness. The Army Audit Agency has and is currently reviewing readiness of both Active Component and Reserve Component units in terms of training and logistics and major weapon systems such as Anti-Armor and CHAPPARAL.

In the Navy, a great deal of quality assurance is the result of communications between the Office of the Chief of Naval Operations and the Fleet Commanders-in-Chief staffs associated with routine preparation of readiness briefings and reports. Access to the contents of the readiness data base, Fleet Units, Fleet CINC sites, etc., has not been denied to any formally processed request by Defense auditors.

In the Air Force, the Air Force Audit Agency and Inspector General evaluate the accuracy of military readiness reports. Air Force auditors have performed projects in recent years where military readiness was the central theme.

Major command inspector general teams conduct operational readiness inspections of Air Force units and, during these inspections, validate unit-level combat readiness reporting in the areas of mathematical accuracy, stated capability (C-rating), and identified deficiencies. Headquarters Air Force Inspector General teams conduct over-the-shoulder inspections of major command teams and, during these inspections, ensure that the major command team carries out the validation process. In addition, there are quality control personnel at major air commands and the Air Staff continually monitoring reported readiness data.

The Defense Audit Service does not evaluate the overall accuracy of military readiness reports given to the Joint Chiefs of Staff (JCS) because of JCS does not provide Defense Audit Service auditoris access to complete Force Status and Identity Reporting System (FORSTAT) reporting data. Defense Audit Service does, however, evaluate the accuracy of the individual readiness reports provided to the JCS as part of the Defense Audit Service audits of unit readiness.

Question 4. Can all aspects of such sensitive programs such as the MX missile, the Navy's nuclear submarine program, and the strategic bombers be evaluated by Defense auditors?

Answer. Yes, all aspects of such sensitive programs as the MX missile, the Navy's nuclear submarine progam, and the strategic bombers can be evaluated by Defense auditors. In fact, the Defense Audit Service recently conducted a review of modifications of the strategic bomber program. In fiscal year 1982, the Army Audit Agency plans to perform a survey of the Corps of Engineers planning for construction for facilities for the MX missile. This survey will result in a plan of audit for the program.

ITEM 9

Question. Would the title of "Auditor General" recommended by GAO be preferable to title of statutory "IG" to cut down on confusion with the current IG program at Defense?

Answer. Adoption of the title "Auditor General" would avoid confusion with the longstanding position of Inspector General within the Military Department, but it could be misleading as to the full scope of the new IG/Auditor General's mission, i.e., the investigation function would not clearly fall under that job title. We suggest that the statutorily established official for DoD be called the "Inspector General for Review and Oversight"—to delineate clearly that official's responsibilities, and yet to distinguish between this new postion and the Service Inspectors General.

ITEM 10

Question. Do you have any estimates concerning the amount of waste which has occurred in the Defense Department in the last fiscal year? For example, a recent report released by the Defense Department estimated that the 47 largest defense procurement contracts are already $47 billion over cost or nearly $1 billion per project. Wouldn't a statutory IG be able to help recommend ways to reduce such excessive cost overruns?

Answer. There are no specific estimates of waste in DoD during the past year. As the Assistant to the Secretary of Defense (Review and Oversight) office works with the DoD audit, investigation and inspection components, we my be able to provide estimates in the future.

In February 1981, the Department of Defense released Selected Acquisition Reports on 47 major acquisition programs. Estimates for the 47 programs increased by 18 percent, from $263 billion to $310 billion as follow:

Reasons for change:	
Quantity changes	$3,817.7
Schedule changes	529.5
Engineering changes	1,361.8
Estimating changes	5,877.5
Support changes	1,651.5
Other changes	+7.3
Total in base-year constant dollars	13,245.3
Economic escalation	3,431.8
Program change related escalation	30,920.1
Total	47,597.2

While we cannot identify how much of the cost growth is due to actual contract cost overruns, 72 percent ($34 billion) is due directly or indirectly to the impact of inflation throughout the life cycle of the system acquisition. Quantity, Schedule, Engineering and Support changes contribute 15 percent ($7.3 billion).

Although we do not believe the $47 billion represents cost overruns, we believe that the Assistant to the Secretary of Defense (Review and Oversight) will be able to help recommend ways to help reduce the costs of DoD procurements. A statutory official charged with similar responsibilities could also do the same thing.

ITEM 11

Question. Why did Defense oppose an IG in past years?

Answer. It is difficult to assess the motivation of the previous Administration at this point. This Administration has, of course, supported the establishment of an Inspector General in Defense who would be subject to the authority, direction and control of the Secretary of Defense.

ITEM 12

Question. How much is currently spent on auditing defense programs each year? How much money is saved or recovered by these audits?

Answer. The net cost to the Department of Defense of operating the five central audit organizations within the Department was $175.7 million for fiscal year 1980.

The full effect of audit activities cannot be stated with precision either in terms of improved efficiency and effectiveness or in terms of increased economy in the use of departmental resources. Much audit effort results in cost avoidance, rather than savings or recoveries. The Department estimated that for fiscal year 1980, recommendations by the internal audit organizations, if fully implemented, could result in monetary benefits of over $4.3 billion. Many of these audit recommendations are in the process of being implemented. Furthermore, administration policy requires, and DoD is implementing follow-up systems, to insure that appropriate consideration and implementation, where warranted, is given to audit findings. The Defense Contractu Audit Agency questioned $1.1 billion in its reviews of incurred contractual costs, and questioned $11.4 billion of amounts proposed by contractors in evaluating forward pricing proposals. Amounts questioned by the Defense Contract Audit Agency represent advisory recommendations to departmental negotiators who would take this into consideration before awarding a final contract; amounts sustained by the negotiators would represent reductions in contractual costs rather than recoveries or collections.

In addition to the above figures, there would be the costs of operating and dispersed "internal review" function as distinguished from the centralized internal audit activities, at lower operating levels within the Military Departments. Since these internal reviewers serve local commanders, neither the cost of such activities nor savings attributable to their efforts are separately collected or identified in departmental totals.

Consideration should be given to the cost of the Criminal Investigative and Inspector General activities of the Department. Although not auditors in the strict sense, these activities are concerned with prevention of fraud, waste and mismanagement. The Report of the Task Force on Evaluation of Audit, Inspection and Investigative Components of the Department of Defense (May 1, 1980) identified the fiscal year 1979 costs of these activities as $226.2 million.

ITEM 13

Question. IG's have done a great deal to help other agencies curb consultant abuses. One recent GAO report found that all but one of the 256 contracts in the Defense Department they reviewed were mismanaged. Could you comment on this report and on whether you believe an IG in your Department could help reduce such problems?

Answer. We do not agree with the characterization that a GAO report found that "all but one of the 256 contracts in the Defense Department they reviewed were mismanaged." The fundamental problem identified in the report was that DoD relied on contractors to perform defense management functions which should be performed in-house. Although DoD agrees that improvements are needed in management controls and practices for management support services, we believe that the proper use of service contracts can be a normal, legitimate and economical way of satisfying mission requirements. It is our policy to ensure that service contracts will not be used to perform work of a policy making or managerial nature, which is the direct responsibility of DoD officials. The Department of Defense is preparing a new directive on management of studies, and is taking action to implement more effective controls.

Over the past 2 years, the Defense Audit Service (DAS) has issued 2 audit reports and is in the process of issuing a third report on management consultant services in the Department of Defense. The reports contain many of the same conditions that were reported by the General Accounting Office. In addition, during this same period, the Army, Navy and Air Force audit agencies have also issued a number of reports on management of consultant services in the Department of Defense.

We believe the conditions reported in the Department of Defense internal audit agency reports, as well as the General Accounting Office report, are relevant and in need of improved management controls. In our opinion, adequate audit attention and resources are being devoted to this important area by the internal Defense audit agencies. In addition, the Defense Audit Service and the Army, Navy and Air Force audit agencies have been specifically instructed by top DoD management to continue evaluating the progress DoD components are making in implementing effective controls over management consulting contracts. The Army Audit Agency is giving special attention to the acquisition and use of consultant services in 27 audits in process in fiscal year 1981 or programmed for fiscal year 1982.

The Assistant to the Secretary of Defense (Review and Oversight) will take an active interest in reducing problems associated with consultants.

Chairman ROTH. The committee will reconvene and at this time I would like to call Mr. Stanley Morris, Associate Deputy Attorney General for the Department of Justice.

Mr. Morris, if you would proceed with your statement.

TESTIMONY OF STANLEY E. MORRIS, ASSOCIATE DEPUTY ATTORNEY GENERAL, DEPARTMENT OF JUSTICE

Mr. MORRIS. I have a very few short remarks, Mr. Chairman. I am pleased to have the opportunity to testify before you today on the views of the Department of Justice regarding the establishment of an Inspector General in the Department.

First, however, I would like to alert the committee that we are working on a bill which would establish an Inspector General in the Department of Justice. Although it is our intention to send this forward shortly, I will not be prepared this morning to discuss the specific details of the legislation.

I understand that it is the committee's intent to hold further hearings on this subject in July. The Attorney General looks forward to working with the committee on this important legislation at that time. It is the responsibility of the existing Inspectors General to: Maintain financial integrity in agency programs by supervising and conducting audits; detect and prevent professional misconduct; monitor administrative problems and deficiencies in agency programs; and report to the agency head and Congress about the status of the administration of the agency's operations. Inspectors General in other departments also report to the Attorney General, when violations of Federal law are uncovered.

It is precisely because we share the committee's concern for the such and well-functioning of the Inspector General system that the Department would like to identify some serious reservations we have about a blanket extension of the act to the Department. These reservations go to the very essence of our mutual commitment to be as vigilant as possible with respect to the integrity of public servants and the management of public moneys.

To assert that the Department of Justice has certain unique characteristics in this area is not to enter an empty parochial plea. A principal function of an Inspector General is law enforcement.

The Department of Justice is different in this regard from other Cabinet departments and ought not to be treated on a par. Other departments engage in a variety of programs which may give rise to law enforcement implications.

Our central mission, however, is law enforcement, and it must therefore be recognized that in that one area, the Attorney General properly belongs at the apex of any network which, like the Inspectors General, serves to uphold the law.

This is not, of course, an observation which was originated by the Department of Justice; this committee recognized it when it wrote the original Inspector General Act of 1978 which requires all Inspectors General to report promptly to the Attorney General any suspected violation of Federal law in their agencies.

In fact, Mr. Chairman, it is interesting to note that when the original Inspector General Act was passed, this committee declared that it would be "undesirable to superimpose an Inspector General, who is basically a law enforcement official, on the law enforcement agencies."

Specifically, unless the Office of the Inspector General in the Department of Justice is carefully designed, it could serve to undermine the Attorney General's role as the Nation's chief law enforcement officer.

For example, a totally independent Inspector General in the Department could consider within his purview such matters as whether enough white collar crime cases are being pursued and prosecuted, the overall effects of settling and prosecuting antitrust of civil litigation or perhaps even the desirability of prosecution in a particular criminal matter.

Furthermore, an independent Inspector General in the Department of Justice could make it more difficult to properly protect investigative and grand jury materials from disclosure.

The purpose of the Inspectors General is to address the problems of fraud and waste in Government programs. However, as these examples suggest, the mere existence of an Inspector General in this Department, unless carefully circumscribed, could have unintended and undesirable effects.

The Attorney General must remain accountable for the discretionary determinations in law enforcement and litigation. These are the central missions of the Department of Justice. At the same time, however, we endorse the establishment of an Inspector General to review those functions of the Department which can be evaluated by traditional cost-effective analysis.

In conclusion, any ambiguity introduced into the law enforcement structure threatens not only the inner functioning of the Department of Justice, but it also weakens the Attorney General as the linchpin of the Government-wide Inspector General program itself.

The Department believes that Inspector General legislation can be structured for the Department of Justice, giving due consideration to our primary mission while meeting the goals of the Inspector General concept. We are devoting significant efforts to develop such a proposal.

We will be presenting this legislation to you shortly and look forward to appearing before you again to discuss in detail its provisions.

Thank you, Mr. Chairman.

I will try to answer any questions you might have.

Chairman ROTH. Let me just start out by saying the purpose of this hearing was to give the various departments the opportunity to give their positions. There is no agreement on the part of the chairman that there will be any further hearings next month. I regret this, but, that was the principal purpose of this hearing today. We will be pleased to accept any further statements you have.

I would just start out by saying that every department who has come up before us, past as well as the present, had a particular reason why their agency or department should not have an Inspector General. I think there are some problems peculiar to the Justice Department in the area of law enforcement that have to be recognized, but I do not think that rules to the advisability or desirability of an independent Inspector General in those areas where they can move with particular usefulness.

For example, it seems that certain policy decisions at the Department might benefit from examination by the Inspector General in particular resource determinations, internal inspection units in the Bureau of Prisons, Immigration, and Naturalization Service, and the Drug Enforcement Administration.

It has been our understanding Justice would oppose the inclusion of these in the proposed transfer to the statutory Inspector General. I wonder what transfers does Justice contemplate in the statutory Inspector General?

Mr. MORRIS. We have, at present, Mr. Chairman, some 300 people in the Department in various organizations responsible for audit and integrity investigations. It was our view that—at least in the legislation we presently developing to focus the activities of the Inspector General on those areas in the Department that would lend themselves to what most people view as areas of waste and fraud in Government programs, as opposed to questions of prosecutorial discretion and law enforcement determinations. In the latter areas we have offices of professional responsibility, a central one in the Department, and then one in all of the major components.

It is those offices which we would propose not folding into a centralized Inspector General's Office.

Chairman ROTH. I understand that Justice is concerned with the type of issues the Inspector General would deal with.

The functions of the Inspector General are stated as follows: (a) Maintaining financial integrity in agency programs by supervising and conducting audits; (b) protecting, preventing professional misconduct; (c) monitoring administrative problems and deficiencies in agency programs, and (d) reporting to the agency head and Congress about the status of the administration of the agency operation.

Do you feel carrying out these functions within the Department may impair the operation of the Department, and if so, where?

Mr. MORRIS. They sound, Mr. Chairman, like the responsibilities of the Attorney General as you read them. I don't have them in front of me.

Our concern is to attempt to define very explicitly the unique nature of the Department of Justice, what the Inspector General would have under his jurisdiction and what he would not have.

I apologize not having what you read from. That did not sound like it would be very specific in terms of excluding and including various Inspector General operations. I think I mentioned in my testimony that it is our view that the Attorney General's decision of whether or not to undertake a particular prosecution of major investigation should not be second-guessed by an Inspector General. This would seriously undermine the Attorney General's role and the administration has serious reservation regarding such a role.

Chairman ROTH. I can see some merit in areas of white-collar crimes and antitrust litigation. At the same time it was only a few years ago that the Justice Department got into serious difficulties with the Congress because of some of their actions, so it does seem to me there are areas that can be excluded for the reasons you said, we do have a lot of sympathy for what you are saying.

At the same time, I don't see where these basic thrusts are of that much concern. Until you come forward with your suggestions, I guess there is not much point in going further. We would like to have your legislative recommendations at the earliest possible time. I would point out that we are talking about amendments to the Inspector General Act and that these amendments are within the general jurisdiction of this committee. I don't want any misunderstanding about that as far as the Justice Department is concerned.

So we would ask you to submit your proposals as early as possible because we do intend to proceed with the markup.

Mr. MORRIS. We will do that, Mr. Chairman.[1]

Chairman ROTH. There is another vote going on. I understand Senator Eagleton will not be back, so I would ask you to expedite that and thank you for coming today. The committee is in recess subject to call of the Chair.

[Whereupon, at 12:40 p.m., the committee was recessed subject to the call of the Chair.]

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[1] The information referred to was not received prior to publication.